United States Court of Appeals for the Second Circuit



APPENDIX

Original or mailing

affect of

76-1197

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1197

UNITED STATES OF AMERICA,

Appellant,

-against-

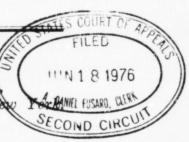
ANGEL ROSARIO,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX

DAVID G. TRAGER, United States Attorner Eastern District of No.



PAGINATION AS IN ORIGINAL COPY

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CRIMINAL DOCKET	75	CR	701	U. S.	MAGISTR	ATZ
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75CR₂ 701

1	PROCEEDINGS	CLEUR'S FELS
DATE		PLANTIFF DEFENDANT
12-12-75	Before BARTELS J - Case called - deft & counsel R.Re	
	bench warrant ordered vacated - hearing on motion to down for Jam 9, 1976 at 3:00 PM.	suppress set
1-9-76	Before BARTELS J a- case called - deft & counsel presentering on motion to suppress ordered and begun - hear	ent - ring contd to
	Jan. 12, 1976 at 4:30 PM.	
1-12-76	Before BARTELS J - case called - deft & counsel pre- resumed - hearing concluded - decision reserved.	sent + hearing
3-10-76		o suppress
3-11-76	Letter filed dated Jan. 8, 1976 received from Chamber	6
, ,	from Elia Weinbach, Asst U.S. Atty.	
3-18-76	Before BARTELS, J - Case called - deft & counsel pre	sent +
3-10-70	Status report as to Govts progress on appeal set down	
	6-29-76 at 9:30 am.	
4-9-76	Notice of Appeal filed (by Govt)	
4-9-76	Docket entries and duplicate of Notice mailed to the	Court of Appeals.
4/14/76 4-19-76	Stenographers Transcript dated 1/9/76 filed Stenographers transcript dated Jan 12, 1976 filed	
4-29-76	Record on appeal certified and mailed to the Court of	
5/3/76	Order received from court of appeals tha record be fil	led on or before
	5/19/76	
5-6-76	Acknowledgment received from the Court of Appeals for Record on appeal.	receipt of
5-11-7	6 Voucher for compensation for expert services filed.	

:EW:dc 751691

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

ANGEL ROSARIO,

Defendant.

INFORMATION

Cr. No. 75(270/ (Title 21, United States Code, Section 844(a))

9-24.75

THE UNITED STATES ATTORNEY CHARGES:

On or about the 29th day of April, 1975, within the Eastern District of New York, the defendant, ANGEL ROSARIO, knowingly and intentionally did possess a quantity of heroin, a Schedule I narcotic drug controlled substance, which possession was not pursuant to a valid prescription or order from a practitioner acting in the course of his professional practice and which possession was not authorized by any subchapter of the Narcotics Control Act of 1970. (Title 21, United States Code, Section 844(a)).

DAVID G. TRAGER United States Attorney Eastern District of New York UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

75 CR 701

ANGEL ROSARIO,

Defendant.

Appearances:

HONORABLE DAVID G. TRAGER United States Attorney Eastern District of New York

By: ELIA WEINBACH, Esq.
Assistant United States Attorney

RICHARD I. ROSENKRANZ, Esq. Attorney for Defendant

BARTELS, D. J.

The defendant, Angel Rosario ("Rosario"), is charged with knowingly and intentionally possessing 26.82 grams of heroin found on his person in violation of 21 U.S.C. §844(a), which evidence he now moves to suppress pursuant to Fed.R.Crim.P. 41(f). He claims that he was arrested on April 29, 1975, without a warrant and without probable cause,

and that the search of his person made incidental thereto was illegal. The arrest occurred under the following circumstances:

On January 16, 1975, Horace Balmer, a detective employed by the Federal Drug Enforcement Administration ("DEA") as an undercover agent, purchased 50.7 grams of heroin from Jose Gonzalez in an apartment in Brooklyn, and again on March 5, 1975, purchased 77.86 grams of heroin from the same Gonzalez at the same apartment. On each occasion another person known as "Angel" was present and participated in the negotiations and sale of heroin, and, on the second date, actually delivered the heroin to Balmer when the sale took place.

As was the DEA practice, these sales were reported by the undercover agent Balmer to other DEA officers and City police officers, including police officer George LeMoine of the New York Drug Enforcement Task Force. LeMoine read Balmer's written report, in which Balmer described Gonzalez's confederate as an unknown white male, possibly called Angel, 28 years old, 5'8" tall, light complexion, weighing 155 lbs.

Balmer also orally described "Angel" without any more 1/ In the second report Gonzalez's confederate was referred to as "John Doe 'Angel'."

specificity, and also described Gonzalez to LeMoine who, prior to Rosario's arrest, had observed Gonzalez in person.

On April 29, 1975, officer LeMoine, who was specifically seeking Gonzalez for the purpose of making an arrest, saw Gonzalez sitting in the driver's seat of a van parked at Fourth Avenue and 53rd Street in Brooklyn. He also saw Rosario, then unknown to him, standing next to the van, talking to Gonzalez. LeMoine, who was driving in the opposite direction, made a "U" turn and came back, intending to arrest Gonzalez. LeMoine and his partner saw the van with Rosario in the passenger seat, moving away from the curb, whereupon the officers drove up, blocked the van's path, and identified themselves as police officers. They ordered Gonzalez and Rosario as well as two other persons in the back of the van to remove themselves, and promptly arrested Gonzalez. At the same time LeMoine asked Rosario his name and upon hearing the response "Angel Rosario," arrested him under the belief that Rosario was the person described to him by Balmer as the Angel who was Gonzalez's confederate in the heroin sales. LeMoine then searched Rosario and found in the pocket of his jacket a cigarette box and a small wallet between which were six tinfoil packets containing a white

powder, subsequently identified as heroin. The description of Rosario prepared after his arrest, stated that he was a white male, 32 years old, 5'7" tall, weighing 155 lbs.

The Government concedes that Angel Rosario is not the person who assisted Gonzalez in his drug sales to detective Balmer in January and March, 1975, but it argues that the search was justified as incidental to an arrest supported by probable cause. The sole issue here is whether LeMoine had probable cause to arrest Rosario for the offense committed by another person described to LeMoine as "Angel". For the reasons discussed below, we conclude that officer LeMoine did not have such probable cause and, therefore, the motion to suppress must be granted.

Discussion

At the outset, it is necessary to note that the arrest was not made by a federal officer but by LeMoine, a New York City police officer. Such officers are authorized under the N.Y.Crim.Proc.Law §140.10(1)(b) (McKinney 1971) to make a warrantless arrest when the officer has "reasonable cause to believe" that the person committed a crime. While it is the New York law that determines the validity of the

arrest, see United States v. Di Re, 332 U.S. 581, 588-91

(1948), it happens that the New York standard is substantially the same as the Federal standard of "probable cause" for arrest. See United States ex rel. Gonzales v. Follette,

397 F.2d 232, 234 (2d Cir. 1968); Sams v. New York State

Board of Parole, 352 F.Supp. 296, 300 n.21 (S.D.N.Y. 1972).

As appears from the facts, this is a case of mistaken identity of an innocent person who the police officer believed from information forwarded to him was a person who had committed an offense. The issue is whether this officer had "reasonable cause to believe" that the innocent person had committed the offense, i.e., whether he had "probable cause" to arrest that person. Referring to arrests by warrants, the Fourth Amendment states specifically that 'no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." (Emphasis added.) These specifics of "probable cause" must likewise be met when a warrantless arrest is made. As we read the Amendment, such an arrest can only be made if the person to be arrested has been "particularly" described. Good faith alone is not a substitute for specific description and is not enough to constitute probable cause. Such good faith must be grounded upon facts which make that faith reasonable. Carroll v. United States, 267 U.S. 132, 161 (1925). The facts as they appear to the arresting officer must be judged not by a subjective standard but by an objective standard. Terry v. Ohio, 392 U.S. 1, 21-22 (1968); United States v. Tramontana, 460 F.2d 464 (2d Cir. 1972). As stated by Mr. Justice Douglas in Henry v. United States, 361 U.S. 98, 104 (1959): "Under our system suspicion is not enough for an officer to lay hands on a citizen. It is better, so the Fourth Amendment teaches, that the guilty sometimes go free than that citizens be subject to easy arrest."

While society has a valid interest in the detention of those suspected of committing crimes, it has an equally valid interest in the freedom of individuals from arbitrary interference. See Brinegar v. United States, 338 U.S. 160, 176 (1949). A warrantless arrest, as distinguished from an arrest based upon a warrant, should receive careful judicial scrutiny since it bypasses the safeguards provided by an objective determination of probable cause required by the issuance of a warrant. Beck v. Ohio,

379 U.S. 89, 96 (1964). While it is true that LeMoine had probable cause to believe that a felony had been committed by some one named "Angel", the question is whether he had probable cause to believe that Rosario was that "Angel" who had committed that felony. Certainly he had not seen with his own eyes the "Angel" who had committed the felony, and there was nothing that Rosario did in his presence that would lead a man of reasonable prudence and caution to believe that Rosario had or was about to commit a crime. Consequently, LeMoine was obligated before the arrest to make certain that the person to be arrested as "Angel" was the person described to him by Balmer. As stated by Mr. Justice Powell in United States v. Watson, 44 U.S.L.W. 4112, 4118 n.4 (U.S. Jan. 26, 1976), probable cause must not only warrant a man of reasonable prudence and caution to believe that an offense had been committed, but also "that the person to be arrested was the offender." The description given by Balmer to LeMoine was of an unknown person, "possibly called 'Angel'." The physical description as to weight, height, color and age would fit a very large group of ordinary young men. The clothing worn by "Angel" as described by Balmer was not the apparel worn by Rosario at the time of the arrest. Also

the arrest occurred seven weeks after Balmer's report, allowing ample time for further investigation of the identity and whereabouts of the real "Angel." Cf. United States v.

McCarthy, 473 F.2d 300, 305-06 (2d Cir. 1972) (crime in actual progress). The only circumstances in LeMoine's favor were the facts that Rosario was found in the company of Gonzalez and that at the time of the arrest he answered to the name of "Angel."

It seems clear that if Rosario had not been in the company of Gonzalez, there could have been no possible basis for his arrest, from which it appears that the description by Balmer of Gonzalez's confederate was entirely too skimpy an identification to risk the invasion of Rosario's liberty without more. The presence of Rosario with Gonzalez on the theory of guilt by association is not sufficient to tip the scales in LeMoine's favor. Sibron v. New York, 392 U.S. 40 (1968). Here, unlike United States v. Salas, 488 F.2d 939, 941 (5th Cir. 1974), the identity of the offender rather than the identity of the crime was crucial.

This is not a case where an arrest was made with probable cause and the innocence of the suspect was later

proved, as in Pierson v. Ray, 386 U.S. 547, 550 (1967), nor a case where conduct on the part of Rosario led the police officer to reasonably believe that a crime was being committed, as in Feguer v. United States, 302 F.2d 214, 245-48 (8th Cir.), cert. denied, 371 U.S. 872 (1962), and in Sams v. New York State Board of Parole, 352 F.Supp. 296 (S.D.N.Y. 1972). This case, however, does bear some analogy to Hill v. California, 401 U.S. 797 (1971), and Clay v. United States, 394 F.2d 281, 285-86 (8th Cir.), cert. denied, 393 U.S. 926 (1968). In both of those cases there was a mistaken identity arrest but the descriptions were much more precise and the circumstances were much more suspicious. See also United States ex rel. Kirby v. Sturges, 510 F.2d 397, 399-401 (7th Cir.), cert. denied, 95 S.Ct. 2424 (1975).

There is no question that this case is a close one; but the Court concludes that the arrest of an innocent person should be carefully scrutinized and that a more precise and identifying description is required than here present. The arrestee should be "particularly described", and a general physical description applicable to innumerable citizens without more is insufficient. Cf. Williams v. Alioto, No. C-74-0866 ACW (N.D. Cal., filed April 25, 1974),

15 Crim. L. Rep. 2187, <u>appeal docketed</u>, No. 74-2149, 9th Cir., June 18, 1974; <u>Commonwealth v. Berrios</u>, 437 Pa. 338, 263

A.2d 342 (1970); ALI, A Model Code of Pre-Arraignment Procedure § 110.2, Pt. IA-Commentary at 270 (April 1975 Draft).

The motion to suppress is granted.

SO ORDERED.

Dated: Brooklyn, New York March 10, 1976.

United States District Judge

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

-----x

U.S.A.,

Plaintiff, :

-against-

: 75 CR 701

ANGEL ROSARIO.

Defendant. :

-----x

United States Court House 225 Cadman Plaza East Brooklyn, New York January 9, 1976 3:00 P. M. o'clock

BEFORE:

HONORABLE JOHN R. BARTELS, U.S.D.C.J.

PAUL GOLDWERT, C.S.R., Acting Official Court Reporter.

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PAUL GOLDWERT REPORTING

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APPEARANCES:

DAVID G. TRAGER, ESQ. United States Attorney BY: ELIA WEINBACH, ESQ., AUSA.

RICHARD ROSENKRANTZ, ESQ. Attorney for Defendant

--000--

THE COURT: Good afternoon.

MR. WEINBACH: Good afternoon.

The government will present two witnesses.

I just want to make a short apology to the court. I do not think I informed the officer in the morning, Detective Balmer, that the trial would go on today. They appeared in their street clothes.

THE COURT: It does not make any difference to me.

MR. ROSENKRANTZ: It does not bother me, sir.

THE COURT: What bothers us are the facts only.

This was up once before and somebody did not appear?

MR. ROSENKRANTZ: Yes. The defendant did not appear. Then he appeared after that.

THE COURT: Gentlemen, the briefs are here.

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PAUL GOLDWERT REPORTING

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This is the case of United States of America against Angel Rosario. I will hear it.

MR. WEINBACH: I had my secretary deliver a letter to you alerting you to the case. I wanted to make sure you received it.

THE COURT: I got that, yes.

MR. WEINBACH: May we proceed?

THE COURT: Yes.

MR. WEINBACH: The government calls Detective Horace Balmer.

HORACE BALMER, having been first duly sworn the the Clerk of the court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WEINBACH:

- Q Detective Balmer, by whom are you employed?
- A By the New York City Police Department.
 - Q In what capacity?
- As a detective.
- Q For how long have you been a detective with the Police Department?
- A Almost 11 years.
 - Q Directing your attention to January 8, 1975,

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1		A 17 Balmer 4
2	d1d y	ou have occasion to be working in an undercover
3	capac	ity on that date?
4	Α	That's correct.
5		Q Do you know a police officer George LeMoine?
6	A	I do.
7		Q How do you know him?
8	A	As a fellow officer working out of the same unit.
9		Q Did you meet with officer LeMoine on that day;
10	that	is, January 8, 1975?
11	Α	Yes.
12		Q Where did you meet with him?
13	Α	Sixth and Dean Street, in Brooklyn, Kings County.
14		Q Do you remember who else was present when you
15	met w	ith him?
16	Α	Yes. There was Detective Frank Caban.
17		Q Anyone else?
18	Α	Yes.
19		Q Who 1s that?
20	A	Another individual who is not a police officer.
21		Q What exactly is he?
22	A	An informant.

As a result of that meeting --

THE COURT: I am sorry. What were the streets?

THE WITNESS: Sixth Avenue and Dean Street.

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MR. ROSENKRANTZ: What date is this?

THE COURT: January 8. I suppose he is going to talk about the first arrest with Jose Gonzalez.

MR. ROSENKRANTZ: I do not think it is relevant.

THE COURT. I think it is relevant.

MR. ROSENKRANTZ: I would concede there was probable cause to arrest Jose Gonzalez.

THE COURT: I am overruling you. That is not ine sole person.

MR. ROSENKRANTZ: This arrest took place on April 29. That was the first time this defendant was ever arrested.

THE COURT: It might be relevant.

MR. ROSENKRANTZ: If I am prepared to stipulate there was valid reason to arrest Jose Gon alez --

THE COURT: No. 1 have overruled you. Let's not waste time. I could be 100 percent wrong.

MR. ROSENKRANTZ: I thought I would save you time.

THE COURT: No. There was another objective. He had something else in mind, I think. If he does not, he will lose.

BY MR. WEINBACH:

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				Bal	mer						6
	Q	As a	resu	ilt o	f th	at i	meeti	ng, d	1d y	ou	have
occas	ion on	that	day	to g	o 1 n	an	apar	tment	1 n	Bro	oklyn?
A	Yes.										
	Q	Where	e d1d	you	go?						
Α	725 F	ourth	Aven	ue.					٠		
	0	With	whom	414	VOII	00	,				

With the informant and Detective Caban. Q This was an apartment building?

Yes. I entered the apartment only with the informant.

I went over to the residence with Detective Caban driving the official government vehicle.

Q You entered an apartment in this building?

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Yes. Q Did you meet anyone in that apartment?

Yes, I did.

Q Whom did you meet in the apartment?

Jose Gonzalez.

Q What occurred in that apartment, if anything? A I was introduced by the informant to Jose Gonzalez

and immediately after, we held a conversation pertaining to the future purchase of heroin from Jose Gonzalez.

As a result of the conversation, I received a sample for no charge of heroin from Mr. Gonzalez.

Q You took that heroin and left the apartment

That's correct.

-	at some pointr
3	A You are correct.
4	Q Did you go with the informant?
5	A I left with the informant.
6	Q What did you do with the heroin you received?
7	A It was taken to the New York Drug Enforcement Task
8	Force office where it was placed into a sealed envelope
9	and it was turned over to police officer LeMoine who de-
10	livered it to the D. E. A. chemist.
11	THE COURT: LeMoine was not a chemist?
12	THE WITNESS: No. He delivered it to the
13	D. E. A. chemist.
14	Q Where did you turn over the heroin?
15	A It was placed into the New York Drug Enforcement
16	Task Force vault and he took custody a day after.
17	Q Did you have occasion to discuss with officer
18	LeMoine your transactions with Jose Gonzalez?
19	A Yes, I di
20	Q When was that?
21	A Immediately after the introduction and the receiving
22	of the sample.
23	Q This would have been the same date, January 8,
24	1975?

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Q At that time, did you physically describe Gonzalez to officer LeMoine?

A Yes, I did.

Q Did you prepare a report regarding your meeting with Gonzalez on January 8, 1975?

A I did.

(Two-page document was marked Government's Exhibit 1 for identification.)

Q Detective Balmer, I show you Government's Exhibit 1 and ask you if you can identify it.

A I can.

Q What is it?

A That is my report that I prepared on January 8, 1975.

Q How do you recognize it?

A I recognize it by my signature and what I said.

MR. WEINBACH: I ask that it be received for purposes of the hearing.

MR. ROSENKRANTZ: No objection.

(Government's Exhibit 1, two-page report, received in evidence.)

Q Directing your attention, Detective Balmer, to
January 16, 1975, did you have occasion to go to the
apartment of the man who is known to you now as Jose Gonzalez?

A That's correct.

Balmer

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PAUL GOLDWERT REPORTING

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	Q	Did	you	meet	with	Jose	Gonzalez	on	January	16
1975?										

A Yes, I did.

Q Was this in the same apartment as when you had met with Gonzalez on January 8?

A That's correct.

Q Did you see Jose Gonzalez in that apartment?

A Yes, I did.

Q Did you go with anyone else to meet Jose Gonzalez?

A I was alone.

Q You entered that apartment. Was anyone else in the apartment?

A Yes, there was.

Q Who was in that apartment?

A A male and a female.

Q What happened in that apartment on that date?

A We held a conversation, myself and the unknown male and Mr. Gonzalez, about the purchase of an ounce of heroin. As a result, I was promised to receive an ounce of heroin that day.

I left the apartment and came back subsequently around 5:00 or 5:15 and received an ounce of heroin.

Q Did you have any conversations with this unknown male?

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	Q	Did	you é	ver	learn	his na	ame on	that	day?
A	On t	hat da	y I w	as 1	ed to	belie	ve that	his	name was
Angel	due	to the	fact	the	t he w	as ca	lled by	the	female
on a c	coupl	e of o	ccast	ons	and by	Jose	Gonzal	ez.	I was
not to	1d 1	t was	a fac	+ .					

THE COURT: Both of them called him Angel?

THE WITNESS: Yes.

THE COURT: That included Jose?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. WEINBACH:

Yes, I did.

Q Did you have a conversation with this man named Angel?

A Yes.

Q What, if anything, did he say to you?

A He guaranteed me that the heroin I was getting from Jose Gonzalez would be of good quality. Also, he said they would not be in business that long if they were selling bad heroin.

Also, Jose Gonzalez told the young lady to exhibit some heroin she had in her possession, to show me that the heroin was a rock.

THE COURT: Who did this?

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1	Balmer 11
2	THE WITNESS: 'e unknown female.
3	Q Was this in the presence of the man named
4	Angel?
5	A Yes, it was.
6	Q There came a time when you left that apartment
7	and you returned the same evening and purchased an amount
8	of heroin?
9	A Yes.
10	Q Was the man Angel present when the purchase of
11	the heroin took place?
12	A Yes.
13	Q Where physically was he in relation to Jose
14	Gonzalez?
15	A We were all in the living room which was small.
16	Q How did the heroin pass; from Jose Gonzalez
17	to you?
18	A That's correct.
19	Q And Angel was present at the time?
20	A Yes.
21	O You haid for that heroin on this occasion?

How much did you pay for it, approximately?

I believe I was supposed to pay 23 or \$2,400. I paid \$100 less due to the fact that we had made arrangements

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where -- I didn't have enough money.

We had talked about a driver's license for Mr.

Gonzalez. There was a promise that I would get him a driver's license and I would take \$100 off the price of the heroin.

Q You took the heroin and you left the apartment. What did you do with the heroin?

A field test was given to the heroin which met with positive results. It was then placed into a properly sealed envelope, placed into the vault and subsequently delivered to the D. E. A. chemist at 555 57th Street, New York City.

Q Detective Balmer, do you know if officer LeMoine kept custody of that exhibit that you purchased on January 16, 1975?

A He took custody from the vault the day after.

THE COURT: He took it to the vault?

THE WITNESS: We placed it in the vault.

THE COURT: Why did you bring in LeMoine?

THE WITNESS: He was the case officer.

Q Detective Balmer, did you have any conversations with officer LeMoine concerning the transaction that took place on January 16, 1975?

A Yes, I did.

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1	Datmer
2	Q When?
3	A The same day.
4	Q Where was that?
5	A In Brooklyn after the purchase at the Drug Enforce-
6	ment Task Force office and a few days after.
7	Did you describe the individuals whom you had
8	met that day and from whom you had purchased heroin?
9	A I did.
10	Q Could you tell the court how you described to
11	officer LeMoine the person Jose Gonzalez?
12	THE COURT: Did you make a report?
13	THE WITNESS: Yes, I did.
14	MR. WEINBACH: I can show it to you.
15	THE COURT: Isn't that description in the
16	report?
17	MR. WEINBACH: Yes.
18	THE COURT: I think that will be important.
19	(Two-page report was marked Govern-
20	ment's Exhibit 2 for identification.
21	Q I am showing you what has been marked Govern-
22	ment's Exhibit 2 and I ask you to identify it.
23	A Yes, it is my report.
24	Q Is this a report of the transaction that took

place on January 16, 1975?

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2	A That	's correct.			
3	Q	How do you re	cognize it as y	our report?	
4	A By m	y signature and	what I state 1	n my report.	
5		MR. WEINBACH:	I ask that 1	t be received f	or
6	the	purposes of the	hearing.		
7		MR. ROSENKRAN	TZ: No object	ion.	
8				bit 2 marked in	ı
9			dence.)		
10	Q	Detective Bali	mer, do you rec	all how you des	cribe
11	the man Jo	se Gonzalez to			
12	1975?				
13	A Yes,	I do.			
14	Q	How did you de	escribe him to	officer LeMoine	?
15		THE COURT:	Who are you tal	king about?	
16		MR. WEINBACH:	Jose Gonzale	z	
17	A Male	, white, five f	eet seven inche	s, 150 pounds,	light
18	complexion	. long dark brow	en hair.		
19	He w	as wearing blue	dungarees, whi	te T-shirt and	a
20	gold neckl	ace.			
21	Q	Had you descr	ibed the man kn	own as Angel to)
22	officer Le	Moine?			
23	A Male	, white, approx	imately 28 year	s old, five fee	t
24		es, 155 pounds,			

multicolored T-shirt and sneakers.

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Q	Is	the	word	"Angel"	1 n	that	report

A Yes.

Q Directing your attention to March 4, 1975, did you have occasion on that day to make arrangements with Jose Gonzalez to meet with him on the following day, that is, on March 5, 1975?

A That's correct.

Q For what purpose?

THE COURT: Wait a minute. That report was dated January 16. He made arrangements on January 16. He made arrangements to meet him in March?

THE WITNESS: On March 4th I made arrangements to meet on March 5th.

THE COURT: What happened after the January meeting?

Q Directing your attention to March 4, 1975, did you make arrangements with Jose --

THE COURT: First, what happened on March 4?

Did you meet anyone on March 4?

Q Did you meet anyone on March 4?

A No. It was done telephonically. I telephonically got in touch with Jose Gonzalez and made arrangements to meet him on March 5, 1975.

Q Did you meet him on March 5, 1975?

PAUL GOLDWERT REPORTING

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PAUL GOLDWERT REPORTING

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	A	I did.
3		Q Where did you meet him?
4	A	725 4th Avenue in apartment E3.
5		Q This is the same apartment you had met Jose
6	Jonza	lez on the 8th and the 16th of January?
7	A	That's correct.
8		Q Did you go with anyone to that apartment?
9	Α	I was alone.
10		Q Was there a specific agent who had driven you
11	to 1	the apartment?
12	Α	That's correct. He did not go in.
13		Q Was this a special agent of the Drug Enforce-
14	ment	Administration?
15	A	That's correct.
16		Q You entered that apartment at some point, is
17	that	correct?
18	A	That's correct.
19		Q Did you see Jose Gonzalez?
20	A	Yes.
21		Q Did you see anyone else in the apartment?
22	A	I did.
23		Q Who was that?

The John Doe, Angel.

THE COURT: I have heard a lot of the angels

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PAUL GOLDWERT REPORTING

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in church but never a John Doe angel.

THE WITNESS: I didn't know his complete name.

THE COURT: You saw the same Angel?

THE WITNESS: Yes.

Q Was this the same Angel you met on January 16, 1975?

A That's correct.

Q Did there come a time when you agreed to purchase heroin from Jose Gonzalez on that day?

A Yes, that's correct.

Q Was Angel present when you came to the agreement with Jose Gonzalez?

A Yes.

Q What, if anything, occurred after you reached the agreement to purchase heroin?

A I delivered the driver's license to Jose Gonzalez and Jose Gonzalez directed Angel to get the heroin. He went out of the room and came back shortly afterwards with the two ounces of heroin.

I was supposed to pay \$4,600 but Angel wanted me to also get him a license. So \$100 was knocked off the price. I believe I paid \$4,500 for it.

After Angel gave me the heroin, I went to give Angel the money and Mr. Gonzalez sort of knocked Angel's hand

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out of the way and took the money.

THE COURT: He took the money. How much?

THE WITNESS: I believe it was \$4,500.

Q Did you have any other conversations with the man named Angel on that day?

A Yes.

Q What was the substance of that conversation?

A He wanted a driver's license.

Q Did he give you the name that he wanted the driver's license in?

A Yes, he did.

Q Do you recall what the name was?

A Yes.

Q What was the name? ..

A Luis Vasquez, I believe.

Q You took the heroin and you left the apartment. What did you do with the heroin?

A field test was administered to the heroin. It met with positive results and it was sent to the New York Drug Enforcement Task Force where it was sealed, weighed and placed into the proper envelope and placed into the vault.

Q Did you meet with officer LeMoine on March 5, 1975?

A Yes.

1	A 32
.	Balmer 19
2	Q When did you meet with him?
3	A Immediately after I left the apartment and at the
4	Task Force office.
5	Q Did you have occasion to discuss the transac-
6	tion that occurred in the apartment?
7	A On both occasions.
8	Q Did you have occasion to describe the individuals
9	in the apartment?
10	A I did.
11	Q Did you make a report of the transaction that
12	you had engaged in on that day?
13	A I did.
14	MR. WEINBACH: Can I have this marked.
15	(Two-page report was marked Government's Exhibit 3 for identification.)
16	Exhibite o for recircular,
17	THE COURT: Let me get the date. The second
18	meeting was on March 5, right?
19	THE WITNESS: That's correct.
20	THE COURT: All right.
21	BY MR. WEINBACH:
22	Q Detective Balmer, I am going to show you what

1	I did.
	MR. WEINBACH: Can I have this marked.
	(Two-page report was marked Government Exhibit 3 for identification.)
	THE COURT: Let me get the date. The second
	meeting was on March 5, right?
	THE WITNESS: That's correct.
	THE COURT: All right.
Y MR	R. WEINBACH:
	Q Detective Balmer, I am going to show you what
as b	een marked as Government's Exhibit 3 for identification
nd a	isk you if you can identify it.
1	I can.

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2		Q What is it?
3	A	This is the report I prepared in reference to the
4	March	5 meeting with Gonzalez.
5		Q How do you recognize it?
6	Α	By my signature and what is stated in it.
7		MR. WEINBACH: I ask that 1t be received, your
8		Honor.
9		THE COURT: All right.
0		MR. ROSENKRANTZ: No objection.
1		(Government's Exhibit 3 marked in evidence.)
2		
3		Q Detective Balmer, in your report did you have
4	occas	ion to describe a man named Jose Gonzalez?
5	A	I did.
6		How did you describe him?
7	A	The same general description as I gave you before and
8	I said	d he was wearing a multicolored T-shirt and dungarees.
9		Q Did you have occasion to describe the person
20	named	Angel?
21	A	I did.
22		Q How did you describe him in the report?
23	A	He was wearing a white T-shirt and light brown slacks.
24		Q Are these generally the same descriptions that

you gave to officer LeMoine on March 5, 1975 and January 16,

1975?

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PAUL GOLDWERT REPORTING

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THE COURT: Did officer LeMoine see these reports?

Q Do you know if officer LeMoine saw the reports?

A He did. Those reports would be handed over to his particular group, which I am not in.

THE COURT: He is the case officer?

THE WITNESS: Yes. So he maintains the file.

THE COURT: Outside of the reports, you gave him the same description orally?

THE WITNESS: That's correct.

Q The substance that you had purchased on March 5 was tested by a chemist. Did you have occasion to learn that the substance you purchased was heroin?

A That's correct.

Q Is that true for the substance you purchased on January 16 and the substance you had received on January 8th?

A That's correct.

Q After March 5, 1975, did you ever have occasion to see Jose Gonzalez again?

A Yes, I did.

Q Where did you see him?

A New York Drug Enforcement Task Force office. I saw

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GOLDWERT REPORTING

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him in between this time and at the New York Drug Enforcement office. I also saw him at MacDonald's on 3rd Street and Sixth Avenue.

- Q When you saw him at the New York Drug Enforcement Task Force, under what circumstances did you see him?

 A He was placed under arrest.
 - Q Was that approximately April 29, 1975?
- A Yes.
- Q Between March 5, 1975 and April 29 when he was arrested, had you seen Jose Gonzalez?
- A No.
- Q Between March 5, 1975 and April 29, 1975, did you ever see the man Angel?
- A No. I diin't.
- Q Do you know whether there was ever an arrest warrant for Jose Gonzalez?
- A I wauldn't know.
- Q Do you know if there was ever an arrest warrant for the man named Angel?
- A I wouldn't know.
- Q At some point you learned that Jose Gonzalez had been arrested, is that correct?
- A That's correct.
 - Q From whom did you learn he had been arrested?

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	Q	D1d	you	also	learn	that	a	man	named Angel	had
been	arrest	ed?				4 :		. :	. 4	

A That's correct.

A Police officer LeMoine.

Q Do you see the man Angel who had been under arrest?

A That's correct.

Q Is that gentleman sitting in the courtroom?
Yes.

Q The man who you see in the court is not the Angel from whom you purchased heroin, is that correct?

A No, it is not.

MR. WEINBACH: I have no further questions of this witness.

CROSS-EXAMINATION

BY MR. ROSENKRANTZ:

Detective Balmer, do you speak Spanish?

A No, I don't. Very little.

Q Have you worked with persons of Latin origin?

A Yes.

Q Is the name Angel a common or an uncommon name among persons of Latin origin?

THE COURT: Do you mean Spanish? Latin could be Italian. What do you want?

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GOLDWERT REPORTING

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MR. ROSENKRANTZ: Spanish.

A I wouldn't know how common.

Q You have heard it before?

A I heard people called Angel. I have heard the name Angel called before.

Q The only description that you say you gave concerning this person who in your report of January 16 you state he is the unknown male, possibly called the Angel, is: male, white, approximately 28 years of age, five feet eight inches tall, 155 pounds, and light complexion; is that correct?

A That's correct.

THE COURT: Let me see the other report.

Are the descriptions the same in the other report?

MR. ROSENKRANTZ: It refers to the other report for the description. The second report, your Honor, only adds the clothing. It does not refer to a physical description.

THE COURT: It refers to Angel but no description.

MR. ROSENKRANTZ: It refers to a previous description.

THE COURT: In the report, he is only described once.

MR. ROSENKRANTZ: Yes, in Government's 2.

THE COURT: That is dated 1/17/75. BY MR. ROSENKRANTZ: 3 Q Were any photographs taken of these individuals during the surveillance? I was not a part of the surveillance. Q Do you know whether any photographs were taken? 7 I don't know. Q Were you ever asked to identify any photographs? 9 No, I was not --A 10 Was I ever asked to identify photographs? 11 Q Yes. 12 A It is possible. I really can't answer that. I don't 13 know. 14 15 Q Were you called to D. E. A. headquarters on 16 April 29, 1975? 17 A No, I was not. 18 Q Did you come there? 19 A No, I did not. 20 Q You say you saw Gonzalez at D. E. A. headquarters 21 on April 29? 22 A I never said that.

Q Where did you see him?

A At the New York Drug Enforcement Task Force office.

Q Were you called there?

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A	No. I work there.
	Q How many persons had been arrested that night
A	I don't recall. Quite a few people were arrested
and	were there.
	Q How many people were arrested with Gonzalez?
A	I don't know.

Q How many persons were you asked to identify at that time?

A Two.

Q Were those the only two persons you were asked to look at or were there other persons?

A I may have seen other people. I don't know.

Q You do not know?

MR. WEINBACH: I do not see the relevance.

MR. ROSENKRANTZ: There were four persons arrested in this car. It was not just Angel and Gonzalez.

MR. WEINBACH: The testimony was he saw them at the Task Force office.

THE COURT: There were not four persons arrested -- well, not by him.

MR. ROSENKRANTZ: I want to know how many people he was asked to look at.

THE COURT: To show what?

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MR. ROSENKRANTZ: To show he was not only asked to look at Gonzalez and this defendant.

THE COURT: He is not identifying this defendant. As a matter of fact, he knew this defendant was not the Angel he saw in the apartment.

You just testified that this Angel was called Angel by both Gonzalez and some female and, yet, in your report you said "possibly called Angel."

What do you mean by that?

THE WITNESS: In other words, during the conversations, it appeared to me they were calling him Angel. I was not exactly sure whether they were saying Angel. There was another name I thought I heard but I heard Angel more often.

THE COURT: Was he or was he not called Angel?

THE WITNESS: In other words, on the second occasion, I am sure, yes, he was called Angel. On the first occasion, I was not sure.

THE COURT: On the second occasion, you were certain --

THE WITNESS: Dofinitely.

THE COURT: -- that he was called Angel.

When they used Angel, did they refer to him?

THE WITNESS: That's correct.

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THE COURT: Was the real Angel ever arrested? .

THE WITNESS: Not to my knowledge.

BY MR. ROSENKRANTZ:

Q You say this person who you say was named

Angel asked to have a driver's license produced in the

name of Luis Vazquez?

A Yes. He wanted the same thing they had gotten for Gonzalez.

THE COURT: He got a state driver's license.

I guess it is no longer in force?

THE WITNESS: Definitely. We were lucky enough to retrieve it.

Q Which one did you retrieve?

THE COURT: Gonzalez.

THE WITNESS: I never gave it to Angel.

Q The one you gave to Gonzalez, under what name was that made?

A It might have been Andres Gonzalez. It is a year ago and I can't remember too well. I can't be definite about it.

Q You are sure the person you referred to as Angel asked for one in the name of Luis Vasquez?

A Yes.

Q You are sure that individual is not the

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PAUL GOLDWERT REPORTING

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defendant here?

A You are absolutely correct.

MR. ROSENKRANTZ: No further questions.

THE COURT: Next witness.

MR. WEINBACH: Just one question.

I would like to have this marked.

(One-page report of non-drug property seized was marked Government's Exhibit 4 for identification.)

REDIRECT EXAMINATION

BY MR. WEINBACH:

Q You do not recall the exact name in which you got a driver's license for Jose Gonzalez?

A Not the exact name, no.

Q I show you what has been marked as Government's Exhibit 4 for identification. Would you take a look at it and I ask you to identify it.

THE COURT: What is it?

Q Would you identify it for the record.

A This is a D. E. A. form 7A used to describe property.

Q Having looked at Government's Exhibit 4, does that refresh your recollection as to the name?

A Yes, 1t does.

Q What was the name that you got the driver's license in?

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tion Task Force.

1	LeMoine 30	
2	A Andres Gonzalez. I was right.	
3	MR. WEINBACH: No further questions.	
4	THE COURT: Bring in the other witness.	
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6	GEORGE LeMOINE, having been first duly	
7	sworn by the Clerk of the court, was examined and	
8	testified as follows:	
9	DIRECT EXAMINATION	
10	BY MR. WEINBACH:	
11	Q What is your name?	
12	A Police officer George LeMoine, Shield 12793, New	
13	York City Police Department.	
14	Q By whom are you employed?	
15	A New York City Police Department.	
16	Q For how long have you been so employed?	
17	A Approximately 18 years.	
18	THE COURT: Let me ask a question. This other	er
19	gentleman was employed by D. E. A., right?	
20	MR. WEINBACH: I will get to that.	
21	Q Directing your attention to January of this	
22	year, in what capacity were you employed?	
23	A I was employed by the New York City Police Department	ent
24	I was working for the New York Drug Enforcement Administ	ra-

3	LeMoine 31
2	Q Were you working in the same building as
3	Detective Horace Balmer?
4	A Yes.
5	Q In fact, were you his case agent?
	A Yes, sir.
7	Q Directing your attention to January 1, 1975,
8	did you have occasion on that day to speak to a registered
9	informant?
10	A Yes.
11	Q What did he tell you?
12	MR. ROSENKRANTZ: What date is this?
13	MR. WEINBACH: January 1.
14	MR. ROSENKRANTZ: It is repetitious.
15	THE COURT: He is talking about New Year's Day.
16	What has that to do with this?
17	MR. WEINBACH: I want to show the court how
18	Officer LeMoine and Detective Balmer worked together.
19	I think a few questions will establish that.
20	THE COURT: All right.
21	Q On January 1, 1975, did you have occasion to
22	speak to a registered informant?
23	A Yes, sir.
24	Q What did he tell you?
25	A He told me he could introduce an undercover officer

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1 n	ti	ne vici	nity o	f 4	th A	venu	e in	Bro	okly:	n.	

- Q Directing your attention to January 8, 1975, were you working on that day?
- A Yes, sir.
 - Q Did you meet with Detective Balmer?
- A Yes, I did.
- Q Did you have occasion to learn what, if anything, Detective Balmer did on January 8, 1975?
- A Yes, sir.
- Q Did you, in fact, meet with him later in the same day, January 8, 1975?
- A I did.
 - Q What did you learn?
- A I learned that Detective Balmer had received an exhibit of heroin from a defendant by the name of Jose Gonzalez.
 - Q How did you learn that?
- A I spoke to Detective Balmer after the consummation of receiving the exhibit and I actually saw the exhibit.
- Q Did you, in fact, take custody of that exhibit?

 A I did, sir.
- Q Do you know if Detective Balmer made a report of the transaction on January 8, 1975?
- A He did.

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1	Le Moine 33
2	Q Did you see that report?
3	A Yes, sir.
•	Q I show you what has been received as Govern-
5	ment's Exhibit 1 and ask you if that is the report that
6	you saw.
7	THE COURT: That was on January 8th, right?
8	MR. WEINBACH: Yes, sir, your Honor.
9	A Yes.
10	Q Did Detective Balmer describe Jose Gonzalez
11	on January 8, 1975?
12	A Yes, he did.
13	Q Had you ever seen Jose Gonzalez prior to
14	January 8, 1975?
15	A Not to my knowledge, no, sir.
16	Q Directing your attention to January 16, 1975,
17	did you have occasion to learn what, if anything,
18	Detective Balmer did on that day?
19	A Yes, sir.
20	Q What did you learn?
21	A Detective Balmer on that day met with the defendant

ne defendant, Jose Gonzalez, which was January 16, and at that time there was a female and another male present in the apartment, and Detective Balmer did receive Exhibit number 2 on that

particular date.

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		Q	D1d yo	u sub	sequently	learn wh	at Exhib	It 2 was?
	A	Yes,	sir. I	t was	heroin.			
		Q	How di	d you	learn al	this in	formation	1?
	A	I was	the cas	se an	ent. All	the info	rmation	In the
	case	was de	elivered	to m	e. ,431 tl	e evider	ce was pa	ssed
	throu	igh me.						
İ		Q	Spec1f	(call	y, d1d Det	tective E	almer tel	1 you
	orall	y what	he had	done	on Januar	ry 16, 19	75?	
	A -	Yes,	sir, he	did.				
		Q	When di	ld he	tell you	that?		
	Α	Immed	liately (pon	returning	from the	office;	1mmed1ate1
	after	the p	urchase	of E	xh1b1t num	ber 2.		
		Q	D1d he	give	you an or	al descr	1pt1on of	the
	peopl	e from	whom he	had	purchased	the her	oin on Ja	nuary 16,
	1975?							
			MR. ROS	ENKR	ANTZ: Ob	jection.		
			THE COL	JRT:	I w111 p	ermit it		
	A	Yes,	sir.					
		Q	Do you	know	1f Detect	ive Balm	er made a	report
	conce	rning	his tran	sact	ions on Ja	nuary 16	. 1975?	
	A	He di	d.					
		Q	Did you	see	that repo	rt?		
	A	I did						

MR. WEINBACH: Your Honor, I believe you have

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Exhibit 2.

Q Officer LeMoine, I will show you what has been received as Exhibit 2 in evidence and ask you if you recognize that as the report that Detective Balmer made.

A Yes, sir, it is.

Q At the end of that report, there appears to be physical descriptions of Jose Gonzalez, an unknown female, and an unknown male possibly called Angel. Did you read that report and those physical descriptions?

A Yes, sir.

Q Those physical descriptions, were they given to you orally as well as by Detective Balmer?

A The oral descriptions were given to me long before the report. The oral descriptions were given to me immediately after the purchase of Exhibit 2.

Q Did you keep custody of Exhibit 2, the heroin?

A I maintained the custody, yes, sir.

Q Directing your attention to March 5, 1975, did you have occasion to learn that Detective Balmer had purchased a quantity of heroin from Jose Gonzalez again?

A Yes, sir.

Q When did you learn that?

A On the date. On March 5, 1975.

Q From whom did you learn that?

PAUL GOLDWERT REPORTING

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He did, sir.

A 49 ;
LeMoine 36
A I learned that from Detective Horace Balmer.
Q He told you this orally?
A Yes, sir, immediately after the purchase.
Q Did he tell you from whom he had purchased
the heroin?
A Yes, sir, he did.
Q From whom did he tell you he purchased it?
A Jose Gonzalez and John Doe Angel.
Q Did he tell you this was the same Angel who
was present in the apartment on the previous occasion;
that is, on January 16, 1975?
A Yes, sir, he did.
THE COURT: Did he describe Angel again to you
THE WITNESS: He did, sir.
THE COURT: In the report, there is only one
description, that is, Exhibit 2?
MR. WEINBACH: That is right.
THE COURT: The same description, practically
It refers back.
BY MR. WEINBACH:
Q Officer LeMoine, do you know if Detective
Balmer made a written report of this transaction of March
5, 1975?

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Q	I show you what has been	received as	Govern-
ment's Exh	ibit 3 and ask you if you c	an identify	it as
the report	written by Detective Balme	r.	

A Yes, sir.

Q Did you read that report?

A Yes, sir.

Q Did you keep custody or maintain custody of the heroin that was purchased on March 5, 1975?

A I did, sir.

Q Had you ever seen the man named Angel as of March 5, 1975?

A No. sir.

Do you know whether any arrest warrant was issued for Jose Gonzalez?

A There was no arrest warrant issued for Jose Gonzalez.

Q Do you know if there was any arrest warrant issued for the man named John Doe Angel?

A There was none issued.

Q Directing your attention to April 29, 1975, did you have occasion to make an arrest of Jose Gonzalez?

A Yes, sir.

Q Prior to April 29, 1975, had you ever seen the man named Jose Gonzalez?

A Yes, sir, I did.

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Do you recall on how many occasions you had seen Jose Gonzalez?

Jose Gonzalez I saw on at least four or five separate occasions prior to April 29.

Q Can you explain the circumstances of how you saw him?

A Yes. On one occasion, he was operating a station wagon automobile and he drove that vehicle and parked it in a garage on 3rd Street just east of Sixth Avenue. Also with him at that time was a female and an unknown male, and he met with Detective Balmer in MacDonald's Restaurant to negotiate future purchases of heroin.

After he left the restaurant, he got back into the car and he drove through various routes throughout the West Village.

> THE COURT: That was on one day. What are the other occasions?

(Continuing) On another occasion, while we were still in the process of negotiating additional purchases of heroin, we were doing surveillance on the house, the residence of Jose Gonzalez. When he came out to his station wagon, there was a flat tire on it. He just went over to the car and looked at the flat: went back into the housing complex and 15 or 20 minutes later he came

out and got into a Volkswagen automobile and drove to a location in Brooklyn.

He parked the Volkswagen in a bus stop and entered

He parked the Volkswagen in a bus stop and entered an apartment house. Approximately an hour later, he got back into the Volkswagen and drove home.

On the third occasion, we began following him during one of these surveillances to various locations in Brooklyn while he was driving the Volkswagen.

On another occasion, he was on the corner of Fourth Avenue and, I believe it is, 23rd Street, the corner of where his apartment house was, and he engaged in conversation with another unknown male.

Q These were occasions all prior to the date you arrested him?

A Yes.

Q I take it Detective Balmer had conversations with him and telling you that this man was Jose Gonzalez at some point.

A Yes, sir. He met with him in the restaurant.

THE COURT: When you saw him, you saw Balmer and him in MacDonald's?

THE WITNESS: I saw them sitting in there in conversation.

THE COURT: Did Balmer then come out and talk

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to you later?

THE WITNESS: Yes.

THE COURT: He told you that was Gonzalez?

THE WITNESS: Yes.

THE COURT: He put his finger on him?

THE WITNESS: Yes.

BY MR. WEINBACH:

Q You arrested Angel Rosario on April 29, 19757

A Yes.

Q He is the man sitting here today?

Q Had you ever seen him prior to April 29, 1975?

No. sir.

Q When on April 29, 1975 did you first see Jose Gonzalez? What time of day was it?

A It was approximately 6:15, 6:20 in the evening.

THE COURT: Who was this?

THE WITNESS: Jose Gonzalez.

THE COURT: It was light yet, wasn't it?

THE WITNESS: Yes.

THE COURT: On the evening of April 29. All

right.

BY MR. WEINBACH:

Q Where did you see him, Officer LeMoine?

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I saw him in a parked van on Fourth ue in the vicinity of 53rd Street in Brooklyn.

Q Where were you when you saw him?

I was in a moving vehicle. Actually, I had specifically gone looking for Jose Gonzalez and attempted to locate him and arrest him. We had not been able to locate him for a couple of weeks.

Q Did you have occasion to stop the truck in which Jose Gonzalez was?

A Yes. What happened after I saw Jose Gon_alez in the truck, I saw the person now known to me as Angel Rosario talking to him.

THE COURT: Inside the truck?

THE WITNESS: No, he was standing outside.

First on the curb and then over by the driver's side.

THE COURT: That is while the van was at rest?

THE WITNESS: It was parked, yes, sir.

THE COURT: First on the curb. Then where?

THE WITNESS: Out next to the driver's side

at the driver's window.

(Continuing) I drave past with the car and I made a U-turn and came back on Fourth Avenue with the intention of, at the appropriate time, to place Gonzalez under arrest.

After I made the U-turn, I saw the van moving out

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with Jose Gonzalez driving with Angel next to him. He made a right turn on 53rd Street. I followed. When they got to the corner of 53rd Street, there was a traffic light that was red. I pulled to the left side of the van and angled my vehicle in front of them.

THE COURT: 53rd Street and what?

THE WITNESS: 53rd and Third.

A (Continuing) I identified myself to Jose Gonzalez by showing my shield and identification. My partner was Police Officer Frasier.

I walked to the passenger side of the rehicle and told Angel to come out of the vehicle and I told Gonzalez to come out. I saw there were two more persons in the back of this van; one, a white female, and one a dark male. I told them to come out.

I placed Jose Gonzalez under arrest. I asked Angel what his name was. He said, "Angel." I then placed him under arrest.

- Q Officer LeMoine, how close to the man named Angel were you when you had those discussions with him?

 A Approximately no more than a foot away.
 - Q You could see how tall he was?
- A Yes.
 - Q And you could estimate how much he weighed?

2	A	Yes.
3		Q You could also see his skin color?
4		Yes, sir. I was standing in front of him.
5		Q Would you continue?
6		THE COURT: What was he wearing?
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8		THE WITNESS: He was wearing a dungaree jacke
9		and, I believe, dungaree trousers and like a floral-
10		type shirt. I know it was a dungaree jacket and I
11		believe it was dungaree trousers.
12		THE COURT: Let me see that description, please
13		You said he had a floral-type shirt on?
14		THE WITNESS: At the date of the arrest?
15		THE COURT: Yes.
		THE WITNESS: I believe underneath the dungare
16		jacket.
17		MR. WEINBACH: I believe you have the descrip-
18		tion of March 5 or January 16.
19		THE COURT: I am reading it. That is why I
20.		am asking.
21		He had a floral-type shirt on, right?
22		THE WITNESS: I believe. I am not sure.
23		THE COURT: I do not know either. I am asking
24		for your testimony. If it is not so, if you really
25		do not know, you can say so. But you believe it was

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Yes, sir.

	LeMoine	44
2	a floral-type shirt or don't you believ	re?
3	THE WITNESS: I am not sure at a	
4	MR. WEINBACH: I offer this.	
5		
6	(Three-page report was ment's Exhibit 5 for 10	
7	B'. MR. WEINBACH:	
8	Q Officer LeMoine, did you eventual	ly make a
9	report of the arrest on April 29, 1975?	
10	A Yes, sir.	
11	Q I show you what has been marked a	s Government's
12	Exhibit 5 and ask you if you can identify it.	(Submitting)
13	A Yes, sir. This is the report of the ar	rest.
14	Q How can you recognize it?	
15	A Because I wrote it and I signed it.	
16	MR. WEINBACH: I would ask that	it be received
17	for purposes of the hearing, your Honor	•
18	THE COURT: All right.	
19	(Government's Exhibit 5	marked in
20		
21	Q On Government's Exhibit 5, Office	r LeMoine,
22	did you physically describe Angel Rosario?	
23	A Yes, sir.	
24	0 Did you also describe what he was	wearing?

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	MR.	WEINBACH:	If	the	court	please,	1 t	15
two	sente	nces.						

- Would you please read how you described the 0 person you arrested, Angel Rosario?
- "Angel Rosario was a white male, 32 years of age. His date of birth, 4/9/43; five feet seven, 155 pounds.

"On April 29, 1975, he was wearing a blue cotton shirt, blue dungaree jacket, blue trousers, and black shoes. Rosario lives at 365 53rd Street, Brooklyn, New York."

- Q After placing Angel Rosario under arrest, did you have occasion to search Angel Rosario?
- Yes, sir.
- Q What, if anything, did you discover as a result of your search?
- In his upper left-hand dungaree jacket, the blue denim jacket, I found six decks of tinfoil containing white powder.
 - Q Did you take sustedy of those decks?
- I did.

THE COURT: What did you call them, decks? MR. WEINBACH: Decks, d-e-c-k-s.

- Q Do you know if the substance in those decks was eventually chemically analyzed?
- Yes.

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	Q Do you know what, if anything, the substance was
A	Yes, sir.
	Q What was it?
A	It was heroin.
	Q The other two individuals, what happened with
them?	
A	They were released after we got to the police station.
	You are talking about the white female and the un-
known	dark-skinned male?
	Q Yes.
A	After we got to the police station, they were released
	Q Detective Balmer was not with you when you made
the a	rrest, was he?
A	No, sir.
	Q Did you have occasion to get in contact with
him a	t all during the day, April 29, 1975?
Λ	Yes, sir.
	Q When was that?
A	When we returned to our office at 201 Varick Street.
	Q Did you attempt to make a phone call prior to
placin	ng Angel Rosario under arrest to Detective Balmer?

No, sir. You are talking about Angel Rosario?

Q That is correct.

No, sir.

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We did not have a radio in the car at this time.

I had a civilian place the call to the police station for assistance.

Q At some point, you learned that Angel Rosario was not the Angel that participated in the sale of heroin to Detective Balmer?

A Yes, sir.

MR. WEINBACH: No further questions.

CROSS-EXAMINATION

BY MR. ROSENKRANTZ:

Q Officer LeMoine, what rank do you hold with the Police Department?

A Police officer.

Q You were the case agent in charge of this case?

A Yes, sir.

Q Were you also in charge of other cases that were pending at this time?

A Yes, sir.

Q Approximately how many?

A At this particular time?

Q During the period from January through the end of April, April 29, to be exact, of 1975, approximately.

A I have no idea.

Q Approximately, how many investigations were you

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2	involved in during that five-month period?
3	THE COURT: Would you say 50, 100, 10?
4 .	A When you say investigations, it is hard to say
5	because there could be 200 investigations you could be
6	involved in as a surveillance man, just going out and
7	doing surveillance. It could have been none.
8	THE COURT: How many cases were you in charge
9	of during that period? What is the average number
10	of cases you were in charge of in one particular
11	month, roughly?
12	THE WITNESS: I would say five or six.
13	Q That you are in charge of?
14	A It would vary. Right now, today, I have approxi-
15	mately 25 cases.
16	Q That you are in charge of?
17	A Yes.
18	Q Are there other cases that you are working on
19	that you are not in charge of?
20	A Sure.
21	Q About how many individuals would you say are
22	connected with all of these different cases, approximately?
23	A I have no way of telling.
24	Q Would you agree there are over 100 individuals

at the time that you are involved in the investigations?

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MR. WEINBACH: Police individuals?

Q (Continuing) No. Persons suspected of dealing in narcotics that you are involved with active investigations of

A What do you mean "active investigation"?

Let me explain it this way. If I am carrying out 25 cases now, I would say the are two people involved in each case, which makes a total of 50. Many times somebody else has a case that 1 is surveillance on, make notes on. As soon as I get back to the office or even by radio, I notify the case agent of descriptions, license plate numbers, addresses, whatever I saw and put it on the report and then the case agent maintains it.

Q When you make the reports up -- you are an experienced police officer?

A Yes, sir.

Q You understand the importance of the way words are used in the reports because they become available to defense counsel at the time of trial; isn't that correct?

What do you mean "in the report"?

Q You are aware of the importance in the way words are used in a report because later they will be arned over to defense counsel at the time of trial. When you make a report, you are careful of how you phrase

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	different things in the report?
,	A Not because they will be turned over to defense
•	counsel. When I make a report, and I am sure all the
5	other agents do, I put down the facts as we know them at
5	the time.
7	Q When is it that you say you placed Angel
8	Rosario, this individual under arrest?
5	A Apr11 29.
0	Q At what point on April 29?

What ac you mean? Q Did you tell us on direct examination that you placed him under arrest at the time he identified himself

as being Angel?

Yes.

Was that prior to the time that you searched him?

Yes, sir.

You understand the significance and importance of when you placed him under arrest, don't you?

THE COURT: What difference does it make?

I will show you Government's Exhibit 5 in evidence. I refer you to paragraph 3. Would you read the second sentence in that paragraph?

"Rosario was also arrested when six tinfoil packets

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containing white powder alleged to be cocaine was found in his jacket pocket."

Does that reflect that Rosario was arrested after you found these tinfoil packets in his pocket? No, sir. They were not cocaine either. A

> THE COURT: The important point is are you sure that you arrested him before you searched him? THE WITNESS: Yes, sir.

MR. WEINBACH: I hate to interpose, but for purposes of the record, I would ask hat the witness read the prior sentence.

MR. ROSENKRANTZ: Sure.

BY MR. ROSENKRANTZ:

Q Read the entire paragraph 3.

"At about 6:30 p.m., defendant Gonzalez drove the above vehicle to 53rd Street and Third Avenue, Brooklyn, New York, where police office LeMoine identified himself to Gonzalez and placed him under arrest. Rosario was also arrested when six tinfoil packets containing white powder allegedly to be cocaine was found in his pocket."

Q In that report, do you indicate that Rosario was placed under arrest at the time he identified himself as being Angel?

I don't know. I have to look at the report.

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Q	Please	do	that.

A No, sir.

Q But it does say, as you just read to us, that he was placed under arrest when six tinfoil packets were found in his jacket pocket; isn't that correct?

A It states, "Rosario was also arrested when six tinfoil packets containing white powder alleged to be cocaine was found in his jacket pocket."

THE COURT: Anything else?

Q Officer, did you have anything with you concerning the description that you say you had of this person Angel?

A What do you mean, "anything with me"?

THE COURT: Did you have the report with you at that time?

THE WITNESS: No. sir.

THE COURT: You did not have anything written?
You just remember what Detective Balmer told you and
you remembered the reports? You knew Gonzalez?

THE WITNESS: Right. I remembered what the description of Gonzalez was. I remembered what the description of the female was and I remembered that there was a white girl who was Jose Gonzalez's girlfriend and her uncle was supposed to be the

Italian connection for Gonzalez.

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There was a white female in the truck and I knew who that was and I knew who Angel was when I

saw him.

BY MR. ROSENKRANTZ:

In the report you do not mention the name Angel. You do not mention anything in the report about the name Angel coming up.

THE COURT: Doesn't he say the man said his name was Angel?

MR. ROSENKRANTZ: No.

Do you or do you not in this report ever mention that Angel Rosario identified himself as Angel and was placed under arrest after doing so; yes or no?

Yes. Angel Rosario, 365 32nd Street.

Q Do you understand my question?

THE COURT: If you ask it differently, I think he will answer.

Q Do you at anytime in your report indicate that this defendant was placed under arrest after identifying himself as Angel or do you indicate that he was placed under arrest after you found six packets in his pocket? A I don't indicate that either. I wrote the report and I know what I am saying in the report. If you want

the report to indicate something else --

Let's stick to the facts.

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Did you testify you saw Gonzalez and you knew him?

be stricken.

THE WITNESS: Yes, sir.

THE COURT: You saw him in the van and you saw also Angel Rosario talking to him outside the van near the driver's side on Fourth Avenue. Then you made a U-turn, went down the street, and when you came back, you found the van moving and Angel was sitting in the driver's seat with Gonzalez.

MR. ROSENKRANTZ: I would ask that the answer

THE COURT: No. You see, you are argumentative.

THE WITNESS: Angel was sitting in the passenger's seat with Gonzalez.

THE COURT: He was next to the driver, Gonzalez. You finally stopped him on Third and 53rd.

THE WITNESS: They stopped at a red light.

THE COURT: You told them all to come out.

You knew Gonzalez and you arrested Mm?

THE WITNESS: Yes.

THE HEARING OFFICER: You brought all of them

out?

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55 THE WITNESS: Yes, sir. What happened was Angel came out first. Then Gonzalez came out. I placed Gonzalez under arrest. My partner, Frasier, had come around and I believe the other two came out of the back from the sliding doors. That is when I realized the white female was there and a dark male.

After placing Jose Gonzalez under arrest, I asked Angel what his name was. He said, "Angel."

THE COURT: This was before you touched him?

THE WITNESS: Yes, sir.

THE COURT: No question bout that?

THE WITNESS: Yes, sir.

THE COURT: You just asked him what his name was and you did not touch him first?

THE WITNESS: No.

THE COURT: What does the report say? You asked him what his name was?

THE WITNESS: Yes.

THE COURT: Did you arrest him when you said --

THE WITNESS: As soon as he said "Angel," I

arrested him.

THE COURT: Where did you search him?

THE WITNESS: Right then and there.

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THE COURT: After his arrest? THE WITNESS: Yes. THE COURT: You did not search before the arrest? 5 THE WITNESS: No. THE COURT: Do you ever search anyone before 7 the arrest? 8 THE WITNESS: No, sir. 9 THE COURT: You have rules and regulations 10 that forbid you from searching anyone before arrest? 11 THE WITNESS: Sure. The general rules of the court is that you never take and search anyone before 13 the arrest. Every police officer knows that. 14 BY MR. ROSENKRANTZ: 15 16 Q Have you discussed with the U. S. Attorney 17 the problems concerning this case since April 29, 1975? 18 MR. WEINBACH: I object to that. 19 THE COURT: I will allow that. 20 I don't think there are any problems. I discussed 21 the case with the U. S. Attorney, yes. 22 THE COURT: What do you mean "U. S. Attorney"? 23 You mean this gentieman (Indicating)? 24 THE WITNESS: Yes. 25 Q Wasn't there also another Assistant U. S.

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Attorney prior to Mr. Weinbach who was handling this case?

A I don't believe so.

MR. WEINBACH: Mr. Cunningham did handle the case.

THE WITNESS: He handled the Jose Gonzalez part of it, yes, sir.

Q Didn't you state in the report that Gonzalez was placed under arrest and Rosario was also arrested when six --

THE COURT: This is the third time. It speaks for itself. I understand your part very well.

The question is whether I am going to take this police officer's word that he first found out what his name was and when it was Angel, he arrested him and that was before he searched him. That is his testimony under oath.

However, there is an ambiguous report which indicates that he arrested him when there was a search.

Q What do you mean, officer, when you say "Rosario was arrested when six tinfoil packets alleged to be cocaine were found in his jacket pocket"?

A I think that is basically a general statement that there were six packets on Angel and not with Gonzalez at

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PAUL GOLDWERT REPORTING

the time of the arrest.

Q Do you ever mention prior to that that Angel had been arrested in your report?

THE COURT: No, he did not do that. The point is, however, you state definitely that you first found out this man's name. As soon as he mentioned "Angel," you arrested him; that you did not search him before you arrested him and you did not arrest him because he had six decks on him. That is your statement under oath?

THE WITNESS: Yes, sir.

THE COURT: This report, I admit, is ambiguous to say the least, but it says you arrested him when you found.

You also state under oath, sir, do police

THE WITNESS: You never search before an arrest, sir.

THE COURT: We got the point. I do not want to waste more time. Now you are repeating and repeating.

BY MR. ROSENKRANTZ:

Q What about the other two individuals? Were they frisked?

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The male was frisked. Not the female at the scene.

THE COURT: Did you frisk Angel?

THE WITNESS: Yes, sir.

THE COURT: Before you arrested him?

THE WITNESS: No. sir.

THE COURT: You arrested him first?

THE WITNESS: Yes, sir. I placed Gonzalez

under arrest and put handcuffs on Gonzalez.

THE COURT: Then you asked Angel what his name was?

THE WITNESS: Yes.

THE COURT: You said, "Angel," and you placed him under arrest. Did you put handcuffs on him?

THE WITNESS: I am not too sure. I didn't frisk him. Handcuffs were placed on. I did frisk him after he was placed under arrest.

THE COURT: You can frisk before arrest if you have any suspicion of a weapon?

THE WITNESS: Yes, sir.

THE COURT: How big were the packets?

THE WITNESS: They were small packets in his

upper left-hand pocket.

THE COURT: How much cocaine was involved?

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	THE	WITNESS	: Actu	ally,	it w	as heroin	. It	:
was a	very	small	amount.	They	were	standard	s1x	decks.
\$5 or	\$7 d	ecks or	the str	eet.				

THE COURT: About \$42 worth?

THE WITNESS: Yes.

BY MR. ROSENKRANTZ:

Q You say you frisked Rosario first?

THE COURT: No. He just said the contrary.

Q You never frisked Rosario?

A No, sir, not until after the arrest.

Q Did you frisk either of the other two persons?

A No, one was a female.

Q Did she have a pocketbook?

A I don't recall because right after that, two police cars came. The uniformed police officers took all four people to the local police station. I drove the truck to the police station.

THE COURT: You never frisked anybody at any time?

THE WITNESS: I did.

THE COURT: Who did you frisk?

THE WITNESS: I frisked Gonzalez. I frisked

Angel.

THE COURT: I thought you said you did not.

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2	THE WITNESS: After they were under arrest
3	I did.
4	THE COURT: Who else did you frisk?
5	THE WITNESS: The third male.
6	THE COURT: Did you arrest the third male, too?
7	THE WITNESS: No, sir. We didn't arrest the
8	girl either.
9	MR. ROSENKRANTZ: I believe nowin answer he
10	said he frisked Rosario after he was arrested.
11	THE COURT: That is right.
12	BY MR. ROSENKRANTZ:
13	Q You frisked them after he was arrested?
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	Q Then you searched him at a subsequent time?
16	A What do you mean?
17	THE COURT: A frisk and a search is entirely
18	different.
19	Q When did you frisk Rosario?
20	A Right after he was arrested.
21	Q When did you search him?
22	A At the stationhouse.
23	Q You did not find the narcotics until you got to
24	the stationhouse?
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25	A I found them during the frisk.

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all sorts of questions twice.

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MR. ROSENKRANTZ: I am trying not to.

I respectfully submit the answers are not the same.

THE COURT: You tell me where they were not the same. A frisk and a search is different.

MR. ROSENKRANTZ: At one time he told us he didn't search him until afterwards. Now he says he did not search him until he got to the stationhouse; that he found this during the frisk.

I submit this is not a subject of a frisking.

THE COURT: You frisk to find out whether there is a weapon. In the course of a frisk, he found a bulging which was not a weapon, but he had no reason to frisk him before the arrest. He frisked after the arrest. In fact, he could have searched him then and there.

Are you telling me you made a further search at the police station?

THE WITNESS: Yes.

THE COURT: What did the search consist of?

THE WITNESS: A thorough search where each and every one of his pockets were emptied. I am sure his clothes were taken off.

THE COURT: All you were interested in was the bulge in the pocket the first time?

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THE WITNESS: Yes.

THE COURT: I will adjourn until Monday morning but I want to be through with this police officer right now.

BY MR. ROSENKRANTZ:

Q Officer, would you also agree that the clothing that you say Rosar o was wearing on April 29 was not at all similar to the clothing that was described in the reports?

MR. WEINBACH: I think the report speaks for itself.

Q Will you read the report?

A "Angel Rosario was a white male, 32 years of age; date of birth, 4/9/43, five feet seven inches tall, 155 pounds.

"On April 29, 1975 he was wearing a blue cotton blouse, blue dungaree jacket, blue trousers, black shoes."

Q At any other time when you were told by

Detective Balmer what Angel had been wearing on the oc
casions in March and January, was he ever wearing dungarees?

THE COURT: I know that. We all know that there is no question that he was not wearing dungarees at the time that Balmer saw the real Angel and there is a deviation in the report.

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Q You never saw the real Angel?

THE WITHESS: I never saw the Angel from the apartment.

THE COURT: You saw this man?

THE WITNESS: I saw this man.

Q Did you know the name of the real Angel?

A I still don't know the true name of the Angel that was in the apartment.

THE COURT: Even if he did, he said he never saw him before.

I do not care about that. That thing just takes time.

MR. ROSENKRANTZ: I have no further questions.

THE COURT: Mr. Rosenkrantz, I do not want you to feel that you have been rushed off. I want you to ask any new questions as long as you do not repeat the same thing that has been asked two and three times before. If you have any other questions that you think are relevant, feel free to ask them, but not a repeat job.

MR. ROSENKRANTZ: I think the record speaks for itself and I think the report speaks for itself.

THE COURT: I think they do quite a bit. I also think his testimony under oath ought to be taken

into	consideration.	We	do	not	throw	that	out,	Mr.
Rosei	nkrantz.							

MR. WEINBACH: May I ask two questions?

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. WEINBACH:

Q How many years have you been an officer? A 18 years.

Q Have you had occasion to participate in a number of arrests during those 18 years?

A Yes, sir.

Q Have you stopped individuals during those 18 years for a frisk or search?

Numerous times, yes.

Q Would it be fair to say it is procedure for immediately after stopping individuals to ask them their 1dentity?

A Yes, it is usually the first thing.

THE COURT: Did you ask the identity of the other people before you arrested them?

You knew Jose. There were three other people in there.

THE WITNESS: There were three other people. There was Angel. I asked him his name.

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	LeMoine 67
2	THE COURT: What about the other people?
3	THE WITNESS: I never did arrest the other
•	The dark thin fellow, I didn't know him.
5	THE COURT: Did you ask him his name?
6	THE WITNESS: Yes.
7	THE COURT: What was his name?
8	THE WITNESS: I don't recall. I can look
9	the reports.
0	THE COURT: You did not arrest him?
1	THE WITNESS: No.
2	THE COURT: Now about the other?
3	THE WITNESS: The white female. I knew who
14	she was from previous conversations.
15	THE COURT: Do you know her name?
16	THE WITNESS: That is also in the report.

THE COURT: The only person's name you asked

two.

for was this other male and Angel?

THE WITNESS: I asked her her name also.

THE COURT: Was she placed under arrest?

THE WITNESS: No.

THE COURT: Only Angel and Gonzalez were placed

under arrest?

THE WITNESS: Yes.

MR. ROSENKRANTZ: May I ask one or two more

questions?

RECROSS-EXAMINATION

BY MR. ROSENKRANTZ:

- Q When you say you only placed Gonzalez and Angel under arrest, when you take people into custody, are they under arrest?
- A Not necessarily so.
- Q When you stopped that vehicle and these four people came out of the car, were the other two people free to go at that time?
- A No. I would say not.
- Q Were the other two people taken to the stationhouse for processing?
- A No, sir, not for processing.
- Q I refer you to paragraph 4 in your report. Read paragraph 4 of your report.
- A "Subsequent to this, the above vehicle and the four occupants were taken to the 68th Precinct, New York City Police Department for processing. After obtaining complete identification of Moore and Cotto, they were released."
- Q Were they taken to the police station for processing?

THE COURT: You asked whether they were arrested. You said no.

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	MR. A SENKRAL	NTZ:	said	were	they	taken	to
the	police station	for pro	cessin	ıg.			
	THE COURT:	It is	five of	s1x.			
	ND DOCENTON	uT7. 1		have	+ -		_

MR. ROSENKRANTZ: May we have the officer back on Monday?

THE COURT: I am trying a case Monday morning.

This will have to be Monday afternoon. Come at five o'clock Monday afternoon.

(Whereupon, the hearing was adjourned to January 12, 1976 at 5:00 o'clock p.m.)

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CERTIFICATE

I hereby certify that the aforementioned is a true and accurate transcript of the proceedings taken by me before Judge Bartels.

Foldwert, C.S.R.

Acting Official Court Reporter

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK UNITED STATES OF AMERICA, -against-75-CR-701 ANGEL ROSARIO, Defendant. -----x United States Courthouse Brooklyn, New York January 12, 1976 Before: HONORABLE JOHN R. BARTELS, U.S.D.J. RAY STALKER ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: ELIA WEINBACH: ESQ.
Assistant U.S. Attorney

RICHARD ROSENKRANTZ, ESQ. Attorney for the Defendant

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THE CLERK: United States against Angel Rosario.

MR. WEINBACH: Good afternoon, your Honor.

THE COURT: Good afternoon. Let's continue
where we left off. You were cross-examining Mr. LeMoine.
What is the number of that exhibit?

THE CLERK: Exhibit 5, three page report. Also Exhibit 2.

MR. ROSENKRANTZ: Exhibit 5?

THE COURT: What was Exhibit 2?

MR. WEINBACH: I'll give it to you, your Honor.

THE COURT: The physical description is in Exhibit 2, isn't it?

MR. WEINBACH: I don't know, your Honor.

THE COURT: Have you looked at it, have you gone into it since you were here?

MR. WEINBACH: That's right, Exhibit 2 has a physical description of an unknown male, possibly called Angel. Exhibit 5, which is before your Honor is Officer LeMoine's report of the arrest. Also I have I believe, it contains a physical description of Angel Rosario.

MR. ROSENKRANTZ: At the time of the arrest.

MR. WEINBACH: At the time of the arrest.

THE COURT: That is the other Angel?

MR, WEINBACH: That's correct, your Honor. I

LeMoine to compare or read the two physical descriptions, one of Angel who had told the or participated, allegedly participated in the heroin sale and the one of Angel Rosario who was arrested.

THE COURT: Let's see. When did you make this report, Exhibit 5?

THE WITNESS: The date is right on top, your Honor.

THE COURT: I have Exhibit 5. It stated -- MR. ROSENKRANTZ: May 7th, Judge.

THE COURT: May 7th, 1975. This of course was after the arrest, right?

MR. WEINBACH: It would have been a week and a day after the arrest. April 29th to May 7th.

THE COURT: I will listen.

been called as a witness for the Government, having been previously duly sworn by the Clerk of the Court, was examined and testified further as follows:

CROSS-EXAMINATION

BY MR. ROSENKRANTZ:

Q Officer LeMoine, would you agree that your recollection of what took place on April 29, 1975, was more accurate at the time that you made this report in May of 1975,

than it is today?

A I would say it is more accurate, yes, sir.

Q And is it also accurate to say that at no time in the report, which has been introduced into evidence as Government's Exhibit 5, did you mention that this defendant Angel Rosario was arrested because he met the physical description of another individual: is that correct?

A I don't understand that question.

THE COURT: I don't understand it either.

MR. ROSENKRANTZ: I will rephrase the question.

Is it accurate to say at that time, at no time in your report, which was made on May 7, 1975, did you indicate that this defendant was arrested because he met the physical description of another individual?

MR. WEINBACH: Your Honor, I think the report speaks for itself.

THE COURT: Yes. We don't have any reports. It speaks for itself, doesn't it?

MR. ROSENKRANTZ: Yes, your Honor. I think I have the right to question this witness's state of mind at the time he made the report.

MR. WEINBACH: Your Honor, the Government will stipulate based on the report, yes, at no time in the report did he mention, did Officer LeMoine mention the

arrest after Angel, Angel Rosario identified --

MR. ROSENKRANTZ: Or met the physical description of another individual.

THE COURT: I think the testimony will or has disclosed whether or not it met a physical description, that was of Angel that was described by Officer Balmer in Exhibit No. 2. Why don't you go on that? His state of mind when he made the report is not important.

probable cause to believe this was the same Angel.

That is all there is to it. Please do not get off the track, Mr. Rosenkrantz. Why don't you find out what the description of Angel Rosario is and what the description in the report of Officer Balmer was to Officer LeMoine, that's where we're going to.

BY MR. ROSENKRANTZ:

Q Officer LeMoine, at the time you arrested this defendant, you didn't have the physical description of Officer Balmer with you, did you?

A In writing? No, sir.

THE COURT: But he had already told you, according to the testimony, hadn't Balmer given you a description?

THE WITNESS: Yes, sir.

THE COURT: There is a report, Exhibit 2. Isn't that the description? I don't know what the description of this man is. What is the weight, height and so forth? Can we do that? ... ow that is the essence of the case. Go ahead.

Officer LeMoine, when was the last time that you had seen the report of Officer Balmer prior to the time that you arrested this defendant?

A I don't recall.

Q Well Officer Balmer's report had been made up

April --

THE COURT: May. I think I'm looking at it.

That's why you don't have it. I believe I have it.

Here is the report. It is dated 1/17/75 which has on

it Angel's description. He testified to it, Agent

Balmer.

MR. WEINBACH: Yes, he did, your Honor.

THE COURT: And now in LeMoine's report, let me see where is the description --

MR. ROSENKRANTZ: Your Honor, I think the important thing is the date.

THE COURT: Let me see the physical description.

In one case this Angel was 28 years old, about 5 foot
eight inches tall. Light complexioned, blue trousers,

multicolored shirt, sneakers. I think it was testified to when he was arrested he did not have a multicolored shirt on or sneakers.

Let me read Angel Rosario's. He's 32 years old.

He's five seven. He's 155 pounds. He had a blue

cotton shirt on and at the time of the arrest he had

a dungaree jacket on and blue trousers. He had blue

trousers on on both occasions. He had black shoes at

the time of his arrest. All right.

BY MR. ROSENKRANTZ:

Q Officer, you don't recall the last time that you had seen Officer Balmer's report prior to April 29th?

A Not offhand. If I see the report, I could probably give you a good fairly accurate --

Q I have a copy, Judge.

A This is on the purchase of Exhibit 2. This gives one description of the Angel that was involved in the sales. Now there is a report after this which also mentions a description, describing Angel. Do you have that copy?

Q Let's work with one copy at a time?

On this one here I would say probably.

THE COURT: You're talking about Exhibit 2?

I have to know.

MR. ROSENKRANTZ: Yes.

A 93

LeMoine-cross

THE COURT: All right.

Q Is this a report dated January17th?

A January 17th. That was for Exhibit No. 2. Now there should 19 another exhibit.

Q We're talking about this exhibit. I want to talk about one report at a time.

THE COURT: I understand what you want to do.

Stand back a little bit. Things can't be forced.

MR. ROSENKRANTZ: I'm not trying to force things.

THE COURT: You'll get the answer to your question. Officer LeMoine, he wants to know when is the last time you saw this report with the description of Angel on it dated January 17, 1975, before the arrest in April of '75?

MR. ROSENKRANTZ: That's correct.

THE COURT: That's the only question. Do you know?

THE WITNESS: Your Honor --

THE COURT: Do you know or can you give us an idea. What is your answer?

THE WITNESS: I don't believe that is the question. I believe that when was the last time I saw a report, referring to a description of Angel, maybe --MR. ROSENKRANTZ: That's not my question.

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A 94 LeMoine-cross

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THE COURT: Ask your present question. Can I ask it?

MR. ROSENKRANTZ: Yes, your Honor.

THE COURT: Answer that question I asked.

THE WITNESS: On this specific report?

THE COURT: Yes.

THE WITNESS: I would say probably sometime around February the 5th of 1975.

THE COURT: That is your answer. Now please proceed. Did you look over these reports since we had this hearing on Friday?

MR. WEINBACH: Yes, your Honor. Briefly.

Q February 5th, 1975, was almost three months prior to April 29th of 1975: is that correct?

MR. WEINBACH: I will stipulate to that, your Honor.

THE WITNESS: Yes.

THE COURT: I take judicial notice of that also, Mr. Rosenkrantz.

Q I show you all of the other reports, Exhibit 3, Exhibit 4 and 1.

THE COURT: I don't know what they are.

Q I ask you if there is anything in these reports that indicates a physical description of this defendant as

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to his weight, height or age?

THE COURT: Yes or no. I think that is easy.

Don't ask him, we know there is no such description.

MR. ROSENKRANTZ: There's no such description.

THE COURT: Then he says no. Mr. Weinbach?

MR. WEINBACH: Your Honor, whatever the

exhibits say, that's what they say.

MR. ROSENKRANTZ: You agree?

MR. WEINBACH: Well, the exhibits have been received in evidence. They say what they say.

THE COURT: That's right. Let him look at it.

I would rather have him.

THE WITNESS: There's a description, date.

MR. ROSENKRANTZ: I am asking for physical description as to weight, height and age?

THE COURT: No.

MR. ROSENKRANTZ: He's going to talk about clothes. That's not what I'm talking about. I'm talking about height, weight, or age.

THE COURT: He is looking. What exhibit are you looking at?

THE WITNESS: Government Exhibit No. 3, this is the purchase of Exhibit No. 3.

THE COURT: May I see this? When you say it's

LeMoine-cross

a purchase, all the time you're referring to the first two purchases, right?

THE WITNESS: Yes, sir.

THE COURT: Exhibit 3, there is a description, but that isn't what he asked you. That may be resorted to a little later. But he says is there any description in those exhibits, 3, 4 or 1, concerning the weight and height. What is the answer as far as you can see?

THE WITNESS: It refers back to the report of January 17th and then the description --

THE COURT: There is a description, it refers back?

MR. WEINBACH: By reference.

THE COURT: By reference, sure.

MR. ROSENKRANTZ: Officer, you agree the only time you saw the report identified as Government's Exhibit 2 was on February 5th, you never saw it after that?

THE WITNESS: I would say that around February the 5th I saw it.

THE COURT: Exhibit 1 on February 5th?

MR. ROSENKRANTZ: Number 2, Judge.

THE COURT: Number 2.

THE WITNESS: Number 2, sir.

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Now I think that we were discussing on Friday, and am I accurate in stating that you testified on Friday that you frisked the defendant Rosario at the scene when you first asked him to step out of the car. But he was not searched until youwent to the police station. Is that correct?

A No, I don't believe I said that.

Q Well, did you search him at the scene or did you search him at the police station?

A I believe he was searched at both places. In fact, I know -- in fact he was searched when he got to our office, also a third time. A different degree of search.

Q So your testimony is that he was searched at the scene: is that correct?

A At the scene where we stopped the truck, no, not really. No.

Q He was not searched at the scene?

A I would -- well -- what constitutes a search?

I put my hand inside his pocket and removed something. Is
that a search?

THE COURT: Well, that's what he wants to know.

Yes, you did search him for that. Are you talking

about an overall search or are you talking about

whether or not he searched his pockets and pulled out

those six sticks or whatever he had?

MR. ROSENKLANTZ: I'm asking him what search did he conduct or did he just frisk him?

THE COURT: What kind of a search are you talking about, a partial or complete search?

MR. ROSENKRANTZ: Well, may I rephrase the question then?

THE COURT: I'm trying to seek the truth. I'm trying to find out what he did.

MR. ROSENKRANTZ: I am also.

THE COURT: I remember his testimony.

Q At the scene where he was arrested, were you searching him to see what you could find?

A At the scene I frisked him. I was looking for weapons at the scene.

Q But you say that you removed these packets from the cigarette box.

A In the upper -- it was in his upper left pocket on the dungaree jacket. I reached with my right, there was a bulge. I belive it was a Marlboro cigarette box behind that, not a box or anything, I believe there were cigarettes in the box. But there were these -- the six decks that I found and miscellaneous other things. Possibly a small wallet or something with a picture. But it was a bulge.

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LeMoine-cross

Q .	Was	the	bulge	behind	the	cigarettes?

A Either behind it or in front of it or underneath.

There might have been even a handkerchief there also.

Q Did this search take place after he was placed under arrest?

A Yes.

Q And after he had said his name was Angel?

A Yes. The first thing when he said -- when I asked him --

Q Did he show you any identification?

A At the scene there, no.

Q Did he show you any identification later?

A Gee, I don't recall. I think we saw this -at the police station, I'm sure that he had something. But
he didn't have it with his address. I assume what address
he gave us was the correct address. I think he had -- I
think he had a social security card with the name Angel
Rosario on it.

Q Did Officer Balmer come to the precinct?

A No.

Q Did you see Officer Balmer that evening?

A Yes.

Q When?

A When we got back to our office at 201 Varrick

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Street. I put the defendant Gonzalez and Angel into an interrogation room. I went and found Detective Balmer and I said to Detective Balmer, "We found both Jose Gonzalez and Angel. Will you come up and identify both of them?"

Balmer came up and he looked in the room. He looked at Angel and he says that's not him. He looked at Jose Gonzalez. He said that is Gonzalez, Gonzalez being who he was at this time --

Q Well --

A Okay.

Q Was Angel Rosario ever charged with the crime that he was arrested for?

A What do you mean was he ever charged with the crime?

Q Before he was brought before the Magistrate the next day was he charged with the sale that had taken place with Gonzalez?

A No, he wasn't. No. By no means he wasn't charged with the sale that had taken place with Gonzalez.

Q In other words when he was brought to the courthouse he was charged only with the crime of possession of these six decks of heroin?

A Yes.

THE COURT: That's ipso facto. That is

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A 101 LeMoine-cross

immaterial. We know he wasn't charged with this.

THE WITNESS: Yes, sir.

THE COURT: He's only charged with the six decks.

I don't know what they were, six?

THE WITNESS: Decks.

MR. WEINBACH: Decks.

MR. ROSEKKRANTZ: There was never any search,
there was an arrest warrant for him prior to the arrest
on April 29th --

THE COURT: Remember on late Friday I said do you have to ask the same questions again and again.

I said I didn't have time for that sort of examination.

Now I don't have the time today for an examination which is just repetitive. It doesn't add anything except consumption of time. I will take this opportunity to say on the record, to my recollection he did say, that is Officer LeMoine did say he asked this gentleman his name, and his name was Angel. He said he then frisked him and as I remember he took something out of his shirt pocket at the scene. Then is that your recollection?

MR. ROSENKRANTZ: Yes, your Honor.

THE COURT: That's what he said. Then he said he took him back. But I don't know what his testimony

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LeMoine-cross

was there. Did he so testify that he took the sticks out on the day of the arrest?

MR. ROSENKRANTZ: Yes.

THE COURT: We covered that. What else can we gain by asking the same questions? I assume he's giving you the same answers.

MR. ROSENKRANTZ: I have no further questions, Judge.

THE COURT: Wait a minute. I have one. You referred to some other descriptions of Angel that you had, it was not necessarily in Exhibit 2. What I want to know is in actuality, I think Mr. Rosenkrantz wants to know also, that is the basis of all his examinations, what did you have in mind, did you have any kind of description to compare this man sitting over here with Angel that had the original transaction with Gonzalez and Balmer? I mean you just went around looking for a man called Angel. Did you have any description in the report, that is on January 1st, '75, you referred to some other description which was later than January 1, 1975. You never really pressed the real question. What description did you have in mind when you arrested this man. Because the reports of Balmer were in January, 1975. What did you have in mind that would

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justify you believing this man was the Angel that Balmer referred to?

THE WITNESS: The actual --

THE COURT: Just because you had the name Angel?

THE WITNESS: No. The actual physical description.

THE COURT: When did you see that physical

description?

THE WITNESS: It was also reported to me by Detective Balmer on several occasions.

THE COURT: How near to this arrest was that description given to you?

THE WITNESS: I would say the description of the detendant Angel and the gill that was present --

THE COURT: Yes?

THE WITNESS: No more than a week before the arrest.

THE COURT: A week before?

THE WITNESS: Yes.

THE COURT: He had given the same description. What about on this occasion, what were you doing?

THE WITNESS: This occasion we were looking for Jose Gonzalez and Angel and the unknown girl. We had gone to Gonzalez's apartment and staked it out.

THE COURT: How long before this arrest, how

LeMoine-cross

much time prior to the arrest had you been talking to Balmer about González and Rosario and had gone to González's apartment to stake it out?

THE WITNESS: I would say the apartment, he was staked out on several occasions. The last one was no later than two weeks before the actual arrest of Gonzalez.

THE COURT: When was the last discussion you had with Balmer about the description of Rosario?

THE WITNESD: I would say approximately a week before the arrest.

THE COURT: A week before. You said in answer to some questions from Mr. Rosenkrantz that you had another description or some other description in another report later than the January report which covered Rosario.

THE WITNESS: Yes, sir.

THE COURT: What report is that?

THE WITNESS: That's on a purchase of Exhibit No. 3.

THE COURT: You kept saying a purchase of an exhibit. We don't purchase exhibits.

THE WITNESS: That's what the report refers to.

That is the title of the report.

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THE COURT: Where is Exhibit 3?

THE WITNESS: I think Government's 3 is also --

THE COURT: That is what I'm interested in. I don't care about the other things.

THE WITNESS: On the last page, your Honor, it lists the physical description and the description after custody of evidence.

THE COURT: Well, when was this arrest made? MR. WEINBACH: On March 5th, wasn't it? That was the purchase, your Honor.

THE WITNESS: That was the purchase.

MR. WEINBACH: The arrest was made April 29th.

THE COURT: April 29th, I recall that. Now however, John Doe, Angel, you say the D.E.A. 6 was prepared on March 5th, John Doe, was there a T-shirt and light brown slacks?

THE WITNESS: That's Balmer's report.

THE COURT: But that isn't what you say you relied on. You say you had a description from Balmer a week before you arrested this man?

THE WITNESS: Yes.

THE COURT: Did you look at any of the reports with these descriptions?

THE WITNESS: Yes.

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THE COURT: Which one?

THE WITNESS: I would say all of them, because

I maintained the case file.

THE COURT: All of them. Ask your question?

MR. ROSENKRANTZ: Do you recall my asking you just a few minutes ago, the last time prior to the arrest on April 29th, when you had seen Government's Exhibit No. 2. Do you recall that?

THE WITNESS: That's the one I probably looked at around February, February the 5th.

THE COURT: Yes, that is his answer.

MR. ROSENKRANTZ: Now you tell us -- now you just told the Court that you had seen it sometime a few weeks before the arrest of April --

MR. WEINBACH: That's not the testimony. He didn't say that. He said he discussed it from time to time and the last description he had from Balmer he had a week before the arrest.

Is that your testimony?

THE WITNESS: Yes.

MR. ROSENKRANTZ: Where did that conversation take place?

THE WITNESS: In the Task Force office.

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CROSS-EXAMINATION

BY MR. ROSENKRANTZ: (cont'd.)

Q Who was present?

A Could have been any number of people.

Q Do you recall who was present?

A No.

(Continued on next page)

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THE COURT: What date of this, 1975, it's a year ago. Let me see. Did Balmer give you the same description that he gave in Exhibit 2?

THE WITNESS: Generally, yes, sir.

THE COURT: What do you mean generally?

THE WITNESS: Well, we knew -- basically the description, all of us did in our group, the description of Jose Gonzalez and Angel that was in the apartment and the female. Because we all had separate occasions when we went looking for them to arrest them.

THE COURT: This was a current alive affair?

THE WITNESS: Exactly. It was a pending case.

It was open to arrest. We wanted to effectuate an arrest as soon as possible.

THE COURT: This was an occasion of incidentally arresting Gonzalez.

THE WITNESS: No, sir. What actually happened, we had ordered up a larger amount of heroin from Gonzalez and we went — we went with quite a few officers to arrest the defendant, all the defendants involved and seized X amount of heroin. But what happened was Gonzalez had a lookout in one of the apartment buildings in the complex.

MR. ROSENKRANTZ: Judge, I'll object to any of this. I do not think it is relevant.

A 109

LeMoine-cross

THE WITNESS: What I am trying to say, we kept looking for these defendants.

THE COURT: What he's trying to say it was a current, almost daily thing?

THE WITNESS: On a daily basis, yes, sir. Every day.

THE COURT: Right up to the day of the arrest of Rosario?

THE WITNESS: Yes, sir. If I wasn't there another two or three man team would go out looking for them.

THE COURT: All right.

MR. ROSENKRANTZ: Officer, isn't it a fact that anybody with Gonzalez on April 29, 1975, who answered to the name of Angel would have been arrested?

MR. WEINBACH: Objection, your Honor.

THE COURT: Let him answer it.

of the Angel sitting here and his name was Angel and there was only one of them, yes, he would have been arrested.

Q You mean from approximately 30 years old of medium height and medium weight --

THE COURT: He didn't say that. All he said

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A 110

LeMoine-cross

was he fit the description.

Q Did you have any facial description?

A Yes. Light kinned, five foot seven, 155 pounds, Hispanic, light skinned, light complexioned. All I can say, counselor, I can remember there were four people on that date I actually made the arrest. Two of them were released, they did not fit the description of Angel.

Q Officer, were they taken into custody at the scene, yes or no?

- A Well, that's another question.
- Officer, were they taken into custody or not?

 THE COURT: Well, taken into custody is one
 thing and arrested is another.

THE WITNESS: That's the question, your Honor?

Q Were all four persons transported to the police station?

A Yes.

Q Were all four persons free to leave before they went to the police station?

THE COURT: Not if they're taken into custody.

- A I would say at that time, no.
- Q Were all four persons processed at the police station?
 - A What do you mean by processed?

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A 111 LeMoine-cross

Q What do you mean by processed?

A Processed?

Q Yes.

A Fully identified.

Q Were they processed?

A Yes. They were.

Q And it was only after processing them that the other two individuals were released, is that correct?

A Yes, sir, I believe so. Yes.

And prior to being processed they had been frisked and their clothing had been gone through also. Isn't that correct?

A The girl, I really don't know.

O How about the man?

A Yes. I frisked him, yes, sir.

THE COURT: Let me ask you a question: you used the word Hispanic. There's nothing in the report, Exhibit 2, showing Angel was Hispanic except perhaps the name. Where do you get Hispanic from?

THE WITNESS: That's a police department phrase.

THE COURT: What does it mean? Did Balmer tell you that Angel was Hispanic?

THE WITNESS: Yes, sir.

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A 112 LeMoine-cross

THE COURT: He did. Is this defendant Hispanic?

THE WITNESS: Yes, in the legal term of the police department. A year ago in the police department --

THE COURT: I'm afraid you'll have to stop there. There's nothing in the report that says Hispanic.

THE WITNESS: I think it doss, your Honor. I'm not too sure. I would have to look and see.

MR. ROSENKRANTZ: Well, your Honor --

THE WITNESS: There are several reports.

MR. ROSENKRANTZ: I think we can agree the reports speak for themselves and there's nothing in the physical description in Government's Exhibit 2 that says Hispanic.

THE WITNESS: Maybe in the body of the report itself, counselor.

THE COURT: Did he tell you that Angel --

THE WITNESS: Same as Jose Gonzalez, sir.

THE COURT: He told you that a week before you arrested Rosario.

THE WITNESS: No. I knew that all the time because I also knew the girl was a white girl. This was not a Hispanic -- Jose Gonzalez' girlfriend was described as being a white girl, not Hispanic.

A 113

LeMoine-cross

THE COURT: That is in there?

THE WITNESS: I don't believe so.

Q Officer, I show you Government's Exhibit 5.

Will you look at the physical description of the person that you put in there.

THE COURT: You better give it to me. I have it.
THE WITNESS: Youwant all of them or just Angel

Rosario's --

THE COURT: Don't waste time.

Q Angel Rosario's description, describing him as being Hispanic?

A No.

THE COURT: Let him answer the question.

THE WITNESS: You asked me to describe what I put down?

Q Go ahead?

A On the physical description, it's exactly at the time of arrest and the form that was given, Angel Rosario was a male, 32 years of age with a D.O.B. which hadn't been known before, five foot seven, 155 pounds.

On April 29th, the day of arrest, he was in a blue cotton shirt, blue dungaree jacket, blue trousers and black shoes. Rosario lives at 365 53rd Street, Brooklyn, New York.

1	99					
',	A 114					
'	1 LeMoine - cross					
2	Q But you didn't put down he was Hispanic?					
3	A No, I didn't put that in.					
4	Q Why didn't you put down he was Hispanic?					
5	A It might be an oversight. I don't know.					
6	Q You put down Ganzalez was a Hispanic in his					
7	physical description?					
8	A Yes.					
9	Q You put down the girl was white even though she					
10	was released?					
11	A No who?					
12	Q Soto?					
13	A That's the male.					
14	Q All right.	,				
15	A And I have him as a Negro Male Hispanic and					
16	Moore is a white female.					
17	Q The only Hispanic that was not described as an					
18	Hispanic was this Defendant Rosario?					
19	A Possibly an oversight. I don't know.					
20	Q You made out the report, Officer, didn't you?					
21	A Yes, I did.					
22	Q So, you bothered to put down one of the indi-					
23	viduals who was released as an Hispanic					
24	THE COURT: Let's get to something else.					
25	MR. WEINBACH: Your Honor, could I ask the Court	t				

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to take judicial notice that the name Angel is a common name in Latin or Spanish speaking countries?

MR. ROSENKRANZ: I don't think it's reserved -in any event, Judge, I have no further questions.

THE COURT: Do you have any questions?

MR. WEINBACH: Just a couple, your Honor.

THE COURT: Are you going to put Mr. Rosario on the stand?

MR. ROSENKRANZ: No, your Honor.

THE COURT: I wouldn't have pressed you so hard to get through with this case --

MR. ROSENKRANZ: I don't think it's necessary, Judge.

THE COURT: Well, that's up to you.

MR. WEINBACH: All right.

THE CLERK: Government's Exhibit 6, report

dated May 28, 1975, marked for identification.

RE-DIRECT EXAMINATION BY

MR. WEINBACH:

Officer LeMoine, I am going to show you hat has been marked as Government's Exhibit 6 for identification and ask you if you can identify it?

> A Yes.

What is it?

It is the case report involving case number 2 CT75-0004, involving Jose Gonzalez, Angel Rosario, in a 1968 Chevrolet truck. John Doe, Angel, not identified and John Doe 4 not identified --5 Could you describe what that document is? Q 6 Yes. A THE COURT: May I have a copy of this? 8 9 to offer it. 10 11

MR. WEINBACH: It's not in evidence. I am going

THE COURT: I can't read from it then.

MR. WEINBACH: I want him to describe what type of document it is.

THE COURT: I can compare it with this. Describe it.

It's a case report.

THE COURT: Just like this report, report of investigation?

THE WITNESS: That's a little bit different.

THE COURT: I see. This is a case report. Now, you can't ask any questions about it until it's introduced into evidence.

MR. WEINBACH: I will offer it, your Honor.

MR. ROSENKRANTZ: Your Honez, I have no objection.

THE CLERK: Government's six marked in evidence.

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Q Now, is it fair to say, Officer LeMoine that
Government's Exhibit 6 is a summry of a particular case?

A Yes, sir, and it's dated May 28, 1975.

MR. WEINBACH: Your Honor, with the Court's permission I would like Officer LeMoine just to read the last two sentences of this Exhibit. I know the Exhibit really speaks for itself, but I think it may clarify the ambiguity that appears to have arisen in Exhibit Number 5. Or at least it might shed some light, the last two sentences, Officer LeMoine?

The last two sentences of the report read,
"Approximately 6:30 p.m. Jose Gonzalez and Angel Rosario were
arrested by above-named officers and charged with the sale of
21 u.s. 841(a)(1) and u.s. 841(a)P.O. Police Officer, seized
from Rosario Exhibit number 4, approximately 25.32 grams gross
of heroin.

THE COURT: Is that it?

Q Is that referring, Officer LeMoine, to the same decks of heroin that were referred to in Government's Exhibit 5, the arrest of Angel Rosario?

A This refers to the six decks of heroin that was found on Rosario at the time of the arrest.

MR. WEINEACH: Your Honor, do you have Government's Exhibit 5?

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LeMoine - re-direct

THE COURT: Yes.

MR, WEINBACH: I have one question on that.

THE COURT: Here it is.

Q Now, Officer LeMoine, I think you testified that you have been a police officer for 18 years?

A Yes, sir.

Q And that you in the course of your experience arrested people of Hispanic origin?

A Yes, sir.

Q And are you generally familiar with the names of people who have Hispanic origins?

A Generally speaking, yes.

Q Based on that experience, if I told you that a person had the name A gel, would it be your opinion that the person would have an Hispanic origin?

A Yes, sir.

Now you stated, I believe, that Francisco Soto was released after being processed at the police station: is that correct?

A Yes, it ic.

Q Do you know for a fact whether Francisco Soto was searched?

A No, I do not.

MR. WEINBACH: I have no further questions,

LeMoine - re-cross

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RE-CROSS EXAMINATION BY

your Honor.

MR. ROSENKRANTZ:

- Is it your opinion, Officer, that he wasn't?
- Well, where and when, what do you means?
- Prior to the time he was processed at the police station, Francisco Soto was either frisked or searched?
 - I frisked him.
 - You frisked him at the scene?
 - At the scene, yes, sir.
- And it was the same time you frisked him that you also frisked the Defendant, Angel Rosario?
 - Yes, sir. Generally speaking, yes, sir.
 - 0 Now, Officer, Exhibit number --

THE COURT: But you didn't arrest him?

THE WITNESS: No, sir.

THE COURT: But you did arrest Angel?

THE WITNESS: Yes, sir.

- Q But Soto was taken into custody and brought to the station house with the others?
 - He was brought to the station house, yes, sir.
- Now this report that has been introduced as Exhibit number 6 this report was made up one month, less one dry, after the arrest: isn't that correct?

LeMoine - re-cross

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Approximately, yes, sir. That is a status A report.

This report was made after you and the other officers had been in discussion with the United States Attorney concerning the facts of this case: isn't that correct?

No, sir.

You hadn't discussed this case at all with the United States Attorney?

- Yes, just at the time of arraignment.
- May I finish the question?
- Go ahead.

Had you or had you not discussed this case with the United States Attorney's office in the Eastern District of New York prior to the time that you made this report up on May 28, 1975?

I'm going back how far, to what date prior to that?

To any date. Ir other words, had you discussed the facts of the arrest of Angel Rosario at any time prior to the time that this report was made up?

Yes, sir.

And at the time you made that report up, you Q knew what the facts of his arrest had been: did you not?

I don't understand that question.

	A 121
1	14 LeMoine - re-cross
2	Q Did you know what the facts of this arrest had
3	been at the time you made this report up on May 28, 1975?
4	A What do you mean by the facts? What are the
5	facts? I don't understand what you're asking, Counsel. I
6	can't answer because I don't understand.
7	Q Did you know what had taken place on April 29,
8	1975, when you made this report up?
9	MR. WEINBACH: It's stipulated, your Honor.
10	MR. ROSENKRANTZ: I don't want that. If we have
11	a stipulation, the Officer is having trouble with it
12	for some reason.
13	THE COURT: That's your opinion. We wouldn't
14	let that in before a jury, would we?
15	MR. ROSENKRANTZ: No, Judge.
16	Q Do you understand my question, Officer?
17	A No.
18	THE COURT: He doesn't.
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20	THE COURT: I don't understand either. Go
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2	Q On May 28th, did you know what had taken place
2	on April 29th?

THE COURT: How could be know otherwise?

THE WITNESS: On April 29th?

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re-cross ... ROSENKRANTZ: I would assume, Judge --THE WITNESS: You mean April 29th? MR. ROSENKRANTZ: April 29th. THE WITNESS: Do I know what happened on April THE COURT: Did ; you say what happened in that THE WITNESS: Yes, sir, I did. THE COURT: Did you sign your name to it? THE WITNESS: I did. THE COURT: What are you saying, Mr. Rosenkrantz? MR. ROSENKRANTZ: Judge, if I may please -did you also know what the report that you had made THE COURT: What number is that? MR. ROSENKRANTZ: Exhibit number 5. THE WITNESS: Did I sign that? MR. ROSENKRANTZ: Yes, you did. THE WITNESS: Yes, I signed it, yes, sir, I did. And would you agree that in the two reports,

the three-page report that was made on -- that was made on May 7, 1975, which consists of only the details of the arrest 23 on April 29th was more complete concerning the arrest on 24 April 29th? 25

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	A 123
1-	16 LeMoine - re-cross
2	A May I see that?
3	THE COURT: Do you understand the question?
4	THE WITNESS: If one report is more complete
5	than the other one.
6	THE COURT: With respect to April 29th.
7	MR. ROSENKRANTZ: Mr. Weinbach would prefer
8	that you read the original.
9	THE WITNESS: The report is dated May 7th.
10	This concerns the arrest of the Defendants Jose Gon-
11	zalez and Angel Rosario, seizure of Exhibit 4, N.D.,
12	seizure of 1968 Chevrolet. I.D. number, so-and-so.
13	That's on the one report that involved
14	THE COURT: What date?
15	THE WITNESS: May 7th. That is Government's
16	Exhibit 5. That's the final case report.
17	Q No
18	A No.
19	Q The final case report is the one page summary
20	that was made up on May 28th
21	THE COURT: What Exhibit is that?
22	MR. ROSENKRANTZ: Government's Exhibit number

THE COURT: I don't have that one. I think I

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6, your Honor.

recall what was said.

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Now when the report, that is Government's Exhibit
that was made up closer to the date of arrest, it was made
up on May 7th, correct?

- A Yes.
- Q And was signed by you?
- A It was signed by me on May the 16th, yes, sir.
- Q But it was dictated by you?
- A Yes, sir.
- Q Would it be fair to say you dictated it on May 7th?
- A I would say it was before May 7th, it would be closer to the date of arrest, yes, sir.
 - Q So it was between April 29th and May 7th?
 - A Yes, sir.
- Q And in that report which concerns itself only with the April 29th arrest, you state, do you not, that Rosario was arrested with six packets containing white powder, alleged to be heroin, cocaine, were found in his jacket?

THE COURT: We explored that for a long time.

MR. ROSENKRANTZ: I think in view of the question by Mr. Weinbach I am entitled to ask this question.

This was an earlier report. That is more complete and concerns itself with the April 29th incident.

THE COURT: No, . "he real question here as

LeMoine - re-cross

I understand it is whether or not the arrest was made.

MR. ROSENKRANTZ: That's correct.

THE COURT: Before he identified this Defendant Angel.

MR. ROSENKRANTZ: The April 29th report, Government's Exhibit 5 never mentioned that he identified him as Angel before he was arrested.

THE COURT: He testified just the other way.

MR. ROSENKRANTZ: I understand that, Judge. One is his report and one is his testimony now, a year later.

THE COURT: That's right, but that isn't exactly true, either. His report doesn't say he arrested, he searched Angel and seized the sticks and then asked Angel what his name was. It doesn't say that either. We went all over this. We have exhausted this area. It is now 5:20.

MR. ROSENKRANTZ: In paragraph 3, Judge, the second sentence in paragraph 3 --

THE COURT: Office LeMoine identified him as

Rosario, he was also arrested. The whole thing, we

explored this very carefully. We're not going to repeat

it.

MR. ROSENKRANTZ: I thought it was worth bringing

up.

THE COURT: In view of what?

MR. ROSENKRANTZ: In Government's Exhibit number 6, which is contrary, which states that Rosario was arrested because of his complicity for a sale.

THE COURT: Yes. It says he was charged with certain sales. Naturally, if they still thought he was the Rosario that was involved in the original sale then naturally he would be charged with it. Let me ask you this. That report states what happened on the day of arrest. He was charged -- Let me read that.

THE WITNESS: At the time of arrest.

THE COURT: He was charged with Section 841, violation of --

THE WITNESS: Both him and Jose Gonzalez were advised by me they were being arrested for a sale of narcotics.

THE COURT: You must take the charge, that is at the time of the arrest, right?

THE WITNESS: Yes.

THE COURT: This was before --

THE WITNESS: Before I frisked or any search was done they were both advised of their rights.

THE COURT: And they were arrested. What is the

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LaMoine - re-cross

point, Mr. Rossnkrantz, I don't understand?

MR. ROSENKRANTZ: Your Honor, my point is it's very inconsistent where the report number 6, which was made up a month after the arrest states that they were arrested and charged with violation of 21 U.S. 841 (a) (1), while report number 5, which is more contemporaneous with the arrest mentions absolutely nothing about the fact that this Defendant was charged with this offense. It's only the later report that brings it up at all.

THE COURT: You will find in all these reports that little things that are important to you but not to the arresting officer, they were not important to him at the time of arrest. This is a little detail. This does not go to the essence.

MR. ROSENKRANTZ: This goes to the essence of the case.

MR. WEINBACH: May I be heard on that? The only reason I offered Exhibit number 6 was merely to show the sequence of events as Officer LeMoine has testified to. That Angel Fosario and Jose Gonzalez were stopped. They were asked to identify themselves and after Rosario identified himself as Angel, Rosario was placed under arrest, after which time we submit it

was legally done. So he was searched.

Now, I agree, there are some ambiguities in the Government's exhibits, such as 5, as to the search, whether it was prior or contemporaneous to the identification. But I think the testimony from Officer LeMoine particularly with respect to the proceedure that he adopts, when he stops someone, namely to ask them to identify themselves, makes it perfectly clear that the sequence was just as he stated the sequence of the --

THE COURT: He testified to that, not only to that, Mr. Rosenkrantz, he doesn't say on this Exhibit 5, which is the one --

MR. ROSENKRANTZ: The earlier report.

THE COURT: Dated May 7. It's not the only report. Let me finish.

MR. ROSENKRANTZ: I said the earlier report.

(continued on next page)

THE COURT: He doesn't say Gonzalez was charged with a violation of 841, either at the time of arrest

MR. ROSENKRANTZ: But he does say what this Defendant was charged with, he said --

when. That is what the wording indicates. The Officer testified several times that he was not arrested then or contemporaneously with the search and discovery of the six packets. But he was arrested after he was identified as Rosario and he also testified that it is the practice in the police force to first identify anyone before they are arrested. You just don't go up to anyone about whom he has suspicions about and not ask him his name, but simply search him and if he finds something on him you arrest him.

He says that is not the practice of the police department and I would be amazed if it was.

RE-CROSS EXAMINATION BY

MR. ROSENKRANTZ:

Q Officer, isn't it a fact if this D_fendant had said his name was Manuel you would have frisked him --

MR. WEINBACH: Objection.

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LeMoine - re-cross

THE WITNESS: I would have frisked him under those circumstances. If he said his name was Manuel, not necessarily frisk him. It depends.

Q Didn't you frisk Soto?

THE COURT: Let him answer.

A There is a possibility I would have frisked him inasmuch as he was with Gonzalez and I know who Jose Gonzalez was and I knew that Jose knew we were looking for him because he was avoiding us when we --

MR. ROSENKRANTZ: I ask that be stricken.

MR. WEINBACH: It's an open end question.

THE COURT: You asked the question.

MR. ROSENKRANTZ: I asked him --

THE COURT: Let him finish then. Go shead.

A Under the circumstances, being with Jose Gonzalez and with the bulge in his pocket I would have went through his pocket.

THE COURT: That answers the question.

Q When you touched the bulge, you knew it wasn't a weapon --

THE COURT: You saw he was with Gonzalez?

THEWITNESS: Yes.

THE COURT: Do you know whether Gonzalez was reported at any time rying weapons?

131 LeMoine - re-cross 2 THE WITNESS: Yes, sir. 3 THE COURT: Do you have any more questions? We're not going to continue with this? 5 Did you frisk Soto? 6 I believe I did. 7 MR. ROSENKRANTZ: No further questions. 8 THE COURT: Anything more? 9 MR. WEINBACH: Just one. 10 RE-RE-DIRECT EXA-INATION BY 11 MR. WEINBACH: 12 Officer LeMoine, you submitted all of your reports to the United States Attorney's Office at some point? 13 14 Yes, sir. 15 Did you have any conversation with me prior to 16 submitting your reports? 17 THE COURT: The final report or which report? 18 any report. 19 No, sir. 20 In fact, Mr. Cunningham was the United States 21 Assistant then. 22 THE COURT: I want to know what this is for. 23

MR. WEINBACH: I want to clear up the record

because there was a suggestion by Mr. Rosenkrantz that Officer LeMoine spoke to the United States Attorney

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LeMoine - re-re-direct

prior to making Government's Exhibits.

MR. ROSENKRANTZ: I don't think there's any question about that.

MR. WEINBACH: I want to clear that up.

THE COURT: Clear it up.

THE WITNESS: It was done before May 5th, also on number 5.

THE COURT: But not in connection with the preparation of the report?

THE WITNESS: Yes, sir. I spoke to the United States attorney when we arraigned the Defendant.

THE COURT: What time, what do you mean --

MR. WEINBACH: Who did you speak to --

THE COURT: What did you say to him, what shall I put in the report?

THE WITNESS: No, sir, of course not.

THE COURT: Did you talk to him by phraseology or verbiage or the statements --

THE WITNESS: No, sir.

THE COURT: What did you say to him?

THE WITNESS: We arrested a man by the name of Angel Rosario and we arrested the Defendant Jose Gonzalez. And that the Undercover Officer Balmer has identified Angel as not being the Angel in the

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LeMoine - re-re-direct

THE COURT: That's the first time ou spoke to

him?

apartment.

THE WITNESS: That's the first time we spoke to the United States Attorney.

THE COURT: You told them of the mis-identification?

THE WITNESS: Yes, sir.

THE COURT: And that was before you made the arrest or after you made the arrest?

THE WITNESS: That was April 30th.

THE COURT: The day after the arrest?

THE WITNESS: Yes, sir. Then on report number

THE COURT: Did you go into detail as to whether
you called up this man and found out his name first
before you searched him or anything of that nature?
THE WITNESS: No, sir.

THE COURT: Or did you say, we got a man here, we arrested him and there's been a misidentification

THE WITNESS: No, I said we arrested a man who we thought was the unknown Angel in the case. John Doe, Angel. It turned out subsequently that it was not him. He did have six decks of heroin on him and

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the circumstances of the arrest --

THE COURT: The circumstances of the arrest is what Mr. Rosenkrantz wants to know. What do you mean by the circumstances of the arrest?

THE WITNESS: How come we got him, how come we arrested Angel Rosario. Thinking that he was John Doe, Angel, that was there during the sale of Exhibit 2 and 3.

THE COURT: You told him about the report, Balmer's report?

THE WITNESS: Yes, sir.

THE COURT: And the description, etc.?

THE WITNESS: Yes, sir. I never discussed the report number 5 or 6 with any of the United States
Attorneys.

THE COURT: Exhibit 5. This is not marked.

MR. WEINBACH:: It's on that one, your Honor.

THE WITNESS: Your HOnor, if I may clear up the Exhibit 5 report. That involves the seizure of the cook. It involves a driver's license, identification of the serial number. It also involves an awful lot of things other than just the arrest.

THE COURT: Well, it was dated May 7.

THE WITNESS: The arrest was April 29th, but the heading on that, seizure, the arrest of two defend-

135 ants, the seizure of vehicle and seizure of Exhibits 2 B and C, I believe. 3 THE COURT: Anything else? MR. WEINBACH: Officer LeMoine, the United 5 States Attorney that you were referring to, that you 8 had a discussion with concerning the arrest of Angel 7 Rosario was Mr. Cunningham? 8 Yes, sir. 9 MR. WEINBACH: No further questions, your 10 Honor. 11 THE COUPT: Any other evidence in the case? 12 MR. ROSENKRANTZ: No, your Honor. 13 MR. WEINBACH: No, your Honor. 14 THE COURT: This is a borderline case. 15 MR. ROSENKRANTZ: Would your Honor consider 16 hearing argument on it? 1 THE COURT: No. It is not necessary. Not after 18 all the testimony and questions. It is a simple case. 19 I don't have to hear any argument. 20 MR. ROSENKRANTZ: Your Honor, the only thing I 21 would like to bring out is that the law --

THE COURT: You might bring it out, but Mr.

Rosenkrantz, you have prolonged this hearing from

last Friday --

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MR. ROSENKRANTZ: Judge, the whole hearing

	A 136	
1	8 took less than three hours.	
2	THE COURT: No, it did not.	
3	MR. ROSENKRANTZ: Sure it did.	
4	THE COURT: You came in Friday. What time did	
5	you start in Friday?	
6	MR. ROSENKRANTZ: Three o'clock. We didn't	
7	start until after 4.	
8	THE COURT: 4:30.	
9	MR. ROSENKRANTZ: A half hour on Friday.	
10	THE COURT: What time did you start today?	
11	MR. ROSENKRANTZ: Five o'clock.	
12	THE COURT: This is the only witness.	
13	MR. ROSENKRANTZ: Two witnesses.	
14	THE COURT: Who's the other?	
15	MR. ROSENKRANTZ: Balmer.	
16	THE COURT: But that was a very short witness	•
17	MR. ROSENKRANTZ: He would have been shorter,	
18	I was willing to stipulate to him.	
19	THE COURT: I will listen to any arguments	
20	that you have predicated upon case law, if that's	
2	What you wanter,	
2		
2	lavors, end	
2	There was no warrant obtained in this case. This w	a

not a case involving hot pursuit as a lot of cases

deal with.

was with Gonzalez.

This was a case in which the crime, the most recent crime had taken place almost two months prior to the arrest. There is no question that the officers had probable cause to arrest the Defendant Gonzalez. The question is whether he had probable cause to arrest any individual of medium size, of medium age, of medium weight who answered to the name of Angel and

One of the cases cited by the Government says

THE COURT: The only question here is whether he had probable cause.

MR. ROSENKRANTZ: I think one of the interesting things that the Government cites in its brief is a case where it says all the information known to the police department should be attributed to the officer making this arrest. If that was so, this Defendant would not ever have been arrested. If Balmer had been present at the scene of the arrest, this Defendant would immediately have been cut loose.

THE COURT: No, no. Under your approach there would be no such cases. Wherein you have a misidenti-fication --

MR. ROSENKRANTZ: There has been no case --

THE COURT: There has been.

MR. ROSENKRANTZ: None of the cases cited by the Government.

THE COURT: I think we had a case, I've gone over this some time ago. I also looked up some law. I believe there was a recent case which was in the advance sheets. Will you get that?

MR. ROSENKRANTZ: Is your Honor referring to the --

THE COURT: LaBel case.

MR. ROSENKRANTZ: That is not a case of misidentification, your Honor. That is a case where they
have the right man, but they didn't have -- they perhaps didn't have the right information about him or
the exact information about him..

There is no case where a wrong man is arrested and the wrong man is held.

involving cases where the wrong man was arrested and the case against him was dismissed because in actuality there was the original officer who had conveyed the description of the Defendant, didn't have any probable cause in the first place to arrest the Defendant. I think that there is a case, not LeBel, where is your brief? Where is the brief?

11 MR. WEINBACH: I have an extra copy.

THE COURT: I don't know specifically whether there was an exact case like this one, but there it is clear the test is whether or not Officer LeMoine had probable cause to believe and acted reasonably when he arrested Angel Rosario.

Now, these cases are not identical, but there are some that are sufficiently close to justify a statement of what happened. It is probable cause.

You see, we begin with the proposition that the purpose of the probable cause which begins with I think Mat versus Ohio, that is, search and seizure without a warrant.

MR. ROSENKRANTZ: goes back before that.

MR. WEINBACH : Probable cause goes back to --

barring of avidence. I'm not talking about you can't arrest because of probable cause. I'm talking about the remedy, the sherriff makes a mistake and the prisoner is let free. I'm talking about the case that first established that probable cause comes from the Constitution. Everyone knows we're talking about this evidence. To that extent, what does it indicate?

MR. ROSENKRANTZ: Judge, if I may say, Mat versus Ohio, that rule simply applies to the state

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12 laws. It's always been the federal rule that -- it's always been the federal rule.

THE COURT: That has not always been. I'm pretty well sure that has not always been. Why don't you think? Why do you think Cardoza made that statement if that wasn't true? There were several. We had a long series, a chain of cases which finally brought up the matter and barred the introduction of evidence because it's a violation of the search and seizure clause of the Constitution.

I could be wrong about that, but I never thought, I didn't think it was always a federal rule. You understand, it actually does not have any relevance to the admissibility of the evidence. Or even as to the pertinence or materiality or relevance of the evidence. It simply is a rule adopted in order to definitely enforce or compel the police department or other law enforcement officers not to violate the rourth Amendment.

rule applies to the states because they found there was no way they could get back at the officers or have suits of recovery etc. But I am, I guess, in error when I thought it was only fairly recently that that was true in the federal cour's.

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When I say fairly recently, I mean within the last 30 years. I could be wrong about that.

MR. ROSENKRANTZ: I don't think so, Judge.

May I address myself to one point?

THE COURT: Yes. I think a very important issue in this case, and the Government refers to it in the LaBel case, which it gave to the Court, LaBel versus Valley, which is a decision. Get me LaBel.

MR. ROSENKRANTZ: I have it here, Judge. I will show you the page I'm referring to in the case which was underlined, not by me but apparently by the Government.

MR. WEINBACH: I agree to that.

THE COURT: The test applies whether the facts available to the officer at the moment of arrest were, "Sufficient to warrant a prudent man in believing a petitioner had committed an offense." The assessment by the Court is to be made on the basis of the elective knowledge of the police rather than on that of the arresting officer alone.

MR. ROSENKRANTZ: Right. I think that is important here.

THE COURT: That is important.

MR. ROSENKRANTZ: May I say --

THE COURT: Don't get excited.

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THE COURT: Do me a vavor, look at United States versus Cardoza at 470, fed second.

MR. ROSENKRANTZ: Also I can bring in the case that I cite, 401 --

THE COURT: Please talk a little slower.

MR. ROSENKRANTZ: It wasn't for Mr. Weinbach,

it was for your Honor.

THE COURT: We can't do things that way. He's got to have it.

MR. ROSENKRANTZ: Whitley at 401, U.S. 470, fed second, page 1275.

THE COURT: Find that.

MR. WEINBACH: Your Honor, may I be heard?

MR. ROSENKRANTZ: May I finish? Judge, if I may, I think that reading Whitley versus Warden, I think the cases I was referring to earlier where the original officer --

THE COURT: Supreme Court?

MR. ROSENKRANTZ: Supreme Court, where the original officers were given the information and that went out on the wire list, they could not have the proper probable cause. If you read that with the statement in Valley, I think what the courts are saying is that the People or the Government cannot have

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15 a stranger case because the person making the arrest doesn't have the information that he should have. In other words --

THE COURT: I understand all that. You must assume that I understand you.

MR. ROSENKRANTZ: I do.

THE COURT: What he is saying, Mr. Weinbach is simply this: is that you can't make a case out subsequently if you never had it originally. It can't become a stronger case by a person who had the knowledge and wasn't present. I have it.

MR. WEINBACH: Your Honor, may I be heard on it just briefly?

THE COURT: Yes.

MR. WEINBACH: I agree entirely with Mr.

Rosenkrantz, but he fails to look at the facts and compare the facts in Labelle. There is no question that the officer who had the initial information had probable cause. There was an assault, I forgot what this underlying crime was. He gave the information, just like Officer Balmer gave the officer information to Officel LeMoine and the arresting officer who just had a name made the arrest.

THE COURT: Did they arrest him?

MR. WEINBACH: They arrested the right fellow.

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But the point is the officer who had the original information had probable cause. No question about it.

THE COURT: The officer who had the original information didn't have probable cause to arrest this man?

MR. WEINBACH: But the point is the arresting officer had probable cause.

THE COURT: You get the probable cause later if he didn't have it before --

MR. WEINBACH: No. What I'm saying is in the LeBelle case --

THE COURT: Suppose the original officer makes a lot of mistakes and the subsequent officer comes along and based on that mistake makes the arrest of a perfectly innocent man?

MR. WEINBACH: It would depend on the circumstances. I have just referred the Court to the test of probable cause, it is a test of weighing the circumstances.

Here we had a case of an officer arresting somebody named Angel. He's arresting a man who responded to the name Angel, who was standing next to a man Josa Gonzales whom the arresting officer knows -- Jose Gonzales, he knew that he dealt in

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heroin through Officer Bauma. There is no question. Under different circumstances I would say your Honor would be correct in finding there is no probable cause. I would like to be heard on the Whitley case in contrast to the LeBelle case: In the Whitley case

THE COURT: Wait a minute. In LeBelle the original officer had probable cause.

MR. WEINBACH: No?

THE COURT: Where do you have a case where the original officer didn't have probable cause?

MR. WEINBACH: Whitley. That is the point.

THE COURT: Let me see it.

MR. WEINBACH: Whitley, that's the exact case.

THE COURT: Where is Whitley?

MR. WEINBACH: In Whitley they try the bootstrapping argument where the original officer did not have probable cause and the original officer who didn't have probable cause tells another officer, Go arrest him. The officer arrests him and the argument is that even though there wasn't probable cause originally, there is probable cause because of the information that got from the other officer to the other officer. The Court properly rejected that argument as bootstrap.

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MR. WEINBACH: I would say it is an highly unusual case. I would agree. I would say under different circumstances the Court might not properly find there is no probable cause --

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THE COURT: Under the circumstances I will take this under consideration. Now I have some other facts to take under consideration which don't pertain to you gentlemen. Do you have any further briefs to submit, any of you?

MR. ROSENKRANTZ: No, your Honor.

THE COURT: I will take this under consideration. Gentlemen, that ends it for this case. I'll bring in the other attorneys.

MR. ROSENKRANTZ: Does your Honor want a copy of LeBelle?

THE COURT: I don't need it.

MR. WEINBACH: Does your Honor have Whitley?

THE COURT: 470, Fed 2nd at 1224.

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That is Caniezo. It is a collective knowledge case and it doesn't cut the way you say it cuts.

It cuts just the opposite.

MR. ROSENKRANTZ: Which case is that, Judge?

THE COURT: The collective knowledge case,

Caniezo and the other one.

MR. WEINBACH: Your Honor, one last point on the collective knowledge. In LeBelle they refer to the collective knowledge and what you're saying is basically these officers may not have the facts to arrest a person except on the basis of another officer's knowledge --

THE COURT: That's right. Don't get excited now.

MR. ROSENKRANTZ: I'm not getting excited,
Judge.

THE COURT: But that doesn't help you particularly because here if you add it all us no one had sufficient knowledge to.

MR. WEINBACH: There's no question, but if Officer Balmer was present he would not have arrested him. There is no argument there.

may have a great deal of difficulty in justifying probable cause. I will have to analyze this more

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19a carefully. Thank you gentleme

MR. WEINBACH: Thank you, your Honor.

MR. ROSENKRANTZ: Thank you, your Honor.

(Whereupon, these processings were

concluded.)

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GOV'T'S EXH. 1

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CT-75-0004

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Usha' dia, Jose

Det. Horace Balmer

New York, New York 1/8/75 Det. Frank Caban PO George LeMoine PO Ronald McCann SA Cherles Ferrigo SA James Reed

Acquisition of Exhibit #1

SYNOPSIS:

On 1/8/75, Det. Balker received Exhibit #1 - 24.07 grams (gross) of brown rock heroin from Jose GONZALEZ for no Official Advance Funds. Exhibit #1 was received at approximately 3:15 PM inside Apt. E3 of 725 4th Avenue, Brooklyn, New York.

DETAILS:

- 1. At approximately 2:30 PM on 1/3/75 Det. Balmer met with SCT40172, PO LeMoire and Det. Caban at 6th Avenue & Dean Street, Brooklyn, New York. At this time Det. Caban along with SCT40172 entered Det. Balmer's OGV N-6835 and Det. Caban drove to the vicinity of 725 4th Avenue, where Dec. Caban parked the OGV.
- 2. Det. Balmer along with SCT40172 exited the OCV and entered 725 4th Avenue and went directly to Apt. E3. SCT40172 knocked on the door and a male voice on the other side asked who was it. SCT40172 identified himself and the door was opened by Jose CONZALEZ.
- 3. At approximately 3:10 PM Det. Balmer and SCT40172 was invited inside the apartment of CONZALEZ. SCT40172 introduced Dat. Balmer to GONZALEZ and greetines were exchanged. GONZALEZ told Det. Balmer that he was appeared him (Det. Balmer) and he hoped that they could develop a good business relationship. Det. Balmer asked GONZALEZ what did he have to offer and GONZALEZ replied very, very good herein.
- 4. Det. Balmer explained to GONZALEZ that the quality of his heroin was very important because Det. Balmer had to guarantee his people that whatever cut he promised the heroin would take, it would have to be accurate.
- 5. GONZALEZ promised Det. Balmer that the heroin that Det Balmer was to receive was of good quality. GONZALEZ then removed a flower pot which was on the floor

RIGION	Det. Horace Balmer DE	· lu
of 4R	SA John B. Pope - QS	URIE
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CT-75-000.

WOMZALEZ. Jose

Lear the kitchen table and dug under the dirt and removed a tin foil packet.

ONZALEZ opened the tin foil packet and showed but. Balmer a brown rock.

ONZALEZ told Det. Balmer that the rock that was in the tin foil was Chinese heroin that could take a ten cut. Det. Balmer told GONZALEZ that he would definitely see just how much of a "hit" it would take. Det. Balmer further stated that he hoped that it wouldn't be any problem with the weight he was to purchase at a later date.

- 6. GONZALEZ guaranteed Det. Balmer that whatever he received as a sample would be of the same quality at purchase. At approximately 3:15 PM GONZALEZ gave Det. Balmer the tin foil packet with the brown rock beroin inside.
- 7. Det. Balmer asked GONZALEZ how could be contact him, and GONZALEZ told Det. Balmer to contact him through SCT40172. Det. Balmer and SCT40172 then exited GONZALEZ's apartment and returned to the OGV which was driven by Det. Caban.

PHYSICAL DESCRIPTION:

Jose CONZALEZ - m/w/5'7" tall, 150 lbs, light complexion, long dark brown hair. GONZALEZ was wearing a prown "T" shirt, dungarees and dark shoes.

DESCRIPTION & CUSTODY OF EVIDENCE:

Exhibit #1 - 24.07 grams (gross) of brown rock heroin wrapped in a tin foil packet. Exhibit #1 was received by Det. Horace Balmer as a free sample from GCNZALE? on 1/8/75 in Apt. E3 of 725 4th Avenue, Brooklyn, New York. The evidence was weighed and sealed on the same date by Det. Balmer as witnessed by PO LeMoine and placed in the NYDETF Vault for sale/septem by PO LeMoine as witnessed by Det. Balmer. On 1/9/75 PO LeMoine removed Exhibit #1 from the NYDETF Vault and delivered it to the U.S. Chemist, 90 Church St., NYC for analysis and safekeeping.

REPORT OF INVESTIGATION	: :.		PAGE 1 OF 3
GONZALEZ, Jose	DGAC	7 4463	CT-75-0004
CTIVE CLOSED REQUESTED ACTION COMPLETED	SA Pope		
Det. Horace Balmer AT New York, New York DATE 1/17/75	PO LeMoine Det. McGroarty PO Houston SA Perrigo PO McGann	. 000	

SYNOPSIS:

REPORT RE

On 1/16/75, Det. Horace Balmer purchased Exhibit #2 - 50.7 grams of brown heroin from Jose GOUZALEZ for \$2200 OAF. Det. Balmer purchased Exhibit #2 from GONZALEZ inside Apt. E3 of 725 4th Avenue, Brooklyn, New York.

Purchase of Exhibit \$2

DETAILS:

- 1. On 1/16/75, Det. Ealmer entered Apt. E3 of 725 4th Avenue, Brooklyn, New York at approximately 3:50 PM. Upon entering GONZALDI's apartment Det. Baluer exchanged greetings with CONZALEZ and was introduced to an unknown male and an unknown female by GONZALEZ: GONZALEZ Told Det. Balmer that he would have to call his connection. Det. Balmer told COMMALLZ to hurry up and call his connection because Det. Balmer had to be somewhere shortly. GOMZALEZ-then went to the telephone which was located in the living room and made a telephone call. GONZALEZ held the phone to his car without speaking to anyone and shortly thereafter GONZALEZ hung up, turned to Det. Balmer and told Det. Balmer that he could not get in contact with his connection. Det. Balmer asked GONZALEZ what did that mean and GONZALEZ replied that there was nothing to worry about because his connection never fails to come through.
- 2. GONZALEZ told Det. Balmer to have a seat and wait because his connection would robably call him. Det. Balmer seated himself on the sofa beside GONZALEZ. COMZALEZ told Det. Balmer that the young lady who was present in the apartment was not his pain woman but was his girlfriend. GONZALEZ asked Det. Balmer that if he care there and met his main girl who was a white female not to mention the young lady that was present in the apartment. (The lady presently in the apartment was of Latin origin). Det. Balmer asked GONZALEZ would the package (heroin) be the same as Det. Balmer had received previously as a cample. CONZALEZ told the young lady to show Det. Balmer what he had given her. The young lady stood and walked to Det. Balmer and reached into her right and pocket and resoved as aluminium foll packet ... Opposed it and exhibited to bett timer REGION

DISTRICT

OTHER

Det. Horace Balmer

APPROVED Name and title SA John B. Pope -

DEA Form (Aug. 1973) - 6

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GOV'T'S EXH.

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REPORT OF INVESTIGATION

(Continuation)

ALL TITLE

GONZALEZ, Jose

CT-75-0004

three brown rocks which resembled Exhibit #1 received from CONZALEZ by Det. Balcer.

- 3. Det. Balmer told GONZALEZ that he wouldn't have any problem dealing with GONZALEZ as long as the heroin he received would be of good quality. GONZALEZ . confirmed with Det. Balmer that the heroin Det. Balmer was going to receive would be the same as the sample Det. Balmer had received before.
- 4. The unknown pale told Det. Balber that the heroin Det. Balber would be receiving from CONZALEZ would always be of good quality. Det. Balmer asked the unknown male was he sure and the unknown male replied to Det. Balber that he and GOMZALEZ Trave been doing business for quite swhile and that if they were not selling quality stuff they would not to in business.
- 5. Det. Balmer, GONZALEZ and the unknown temale and the unknown male watched television for a short period of time directing all conversation towards the television program. CONZALSZ asked Det. Balmer could be get him a driver's license. Det. Halmer asked GOMZALSZ what did he mean, and COMZALSZ told Det. balmer that he needed a driver's license because he could not get one in New York. Det. Balber told GODZALEZ that he would look into it and let him know something Monday. GOMZALEZ taked Det. Balmer how much money he had with him for Exhibit 72. Det. Balmer replied \$2200. CONZALEZ Told Det. Balmer that the package would cost \$2500.
- 6. Det. Balmer asked GOHZALEZ would be trust him for the \$100 or give Det. Balmer the opportunity to get CONZALEZ a driver's license for the \$100. GONZALEZ happily agreed and wrote down on a piece of paper what he wanted the driver's license to have on it and gave it to Det. Dalmer. Det. Dalmer then told CONZALEZ that he would have to leave the spartment, because he had to be somewhere in Brooklyn, New York by 5 PM, and asked GOMZALEZ To give him his phone number, so Det. Balmer could call him after he had completed his five o'clock meeting. GONZALEZ complied and gave Det. balmer on a piece of paper his nickname which was "HIPPIE" and a number. bet. Balmer at about 4:22 PM left GONZALEZ's apartrert.
- 7. At about 4:30 PM Det. Balmer net with SA Pope and SA Pope joined Det. Balber in CGV N-6335 and proceeded to a telephone booth in the area. SA Pope exited the OGV at a telephone booth and notified tembers of the surveillance team of what had transacted between Det. Balmer and GOHZALEZ.
- 8. At about 5:10 PM Det. Balmer placed a telephone call to CONZALEZ and CONZALEZ confirmed that Embibit #2 was available for Det. Balmer to pick up. At approximately 5:25 0.1 Bet. Balmer parked his OGV and entered 725 4th Ave., and went directly to Apr. E3, where GONZALET had the door opened waiting for Det. Lainer. Det. Balmer encored the apartment and was given Exhibit #2 by GO ZALLE

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GOV'T'S EXH. 2

1/17/75

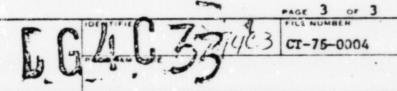
Grp. 14

REPORT OF INVESTIGATION

(Continuation)

FILE TITLE

GONZALEZ, Jose



at approximately 5:27 PM and Det. Balmer gave GONZALEZ \$2200 OAF. At approximately 5:30 PH Det. Balmer exited GONZALEZ's apartment and went directly to the NYDETF Offices where a field test met with positive results.

DESCRIPTION & CUSTODY OF EVIDENCE:

Exhibit #2 - 50.7 grams of brown heroin contained in a small plastic bag secured at the top with a red wire twist, purchased by Det. Horace Laimer from GONZALEZ on 1/16/75 at approximately 5:27 PM in Apt. E2 of 724 4th Ave.. Brooklyn, New York. The evidence was weighed and sealed on the same day by Det. Balmer as witnessed by PO McCann. Both were initialled and Det. Balmer sealed the container and placed Exhibit #2 into the NYDETF Vault for safe keeping. On 1/17/75 PO LeMoine removed the evidence from the vault and hand delivered the evidence to the U.S. Chemist. 90 Church St., NYC for analysis and safekeeping.

PHYSICAL DESCRIPTION:

Jose GONZALEZ - m/w/5'7" tall, 150 lbs, light complexion, long dark brown hair.
GONZALEZ was wearing blue dungarees, a white 'T' shirt and a gold necklace.

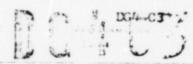
Unknown Female - f/v/20 yrs. of age, wearing a white "T" shirt, bright blue dungarces and white high heel shoes, 5'2" tall, 110 lbs, light complexion, dark brown hair and very soft spoken.

Unknown Male - possibly called ANGEL - m/w/23 yrs., 5'8" tall, 155 lbs, light complexion, wearing blue trousers, multi colored shirt and sueakers.

DEA form (Aug. 1973) - 6a

REPORT OF INVESTIGATION

GONZALEZ, Jose et al



S/A Carwell

CT-75-0004

Det. Horace D. Balmer New York, New York March 10, 1975

P.O. Lemoine Det. Brarble

Inv. Mercer P.O. McCann P.O. Lopez

S/A Reed

Purchase of Exhibit #3

SYMOPSIS:

On March 5, 1975, Det. Horace D. Balmer purchased 77.86 grams (gross weight) of brown heroin from Jose GUNZALEZ et al, for \$4600.00 OAF in Kings County, Hey York.

DETAILS:

- 1. On March 4, 1975, Det. Balmer telephonically made arrangements with Jose GONZALLZ to purchase two (2) ounces of heroin on March 5, 1975. GONZALEZ set the time for the meeting for 2:00PM.
- 2. On March 5, 1975 at approximately 1:55PM, Det. Balmer along with S/A Carwell (who was driving) parked OCV N-6035 directly in front of 725 4th Avenue on the 23rd Street side. Det. Balwer exited OGV and went directly to apartment E3. Det. Balmer knocked on the door and was admitted by GONZALEZ.
- 3. After entering CONZALEZ apartment, Bet. Balmer was directed to the bedroom by CONZALLZ. CONZALLZ asked Det. Halmer did he bring the drivers license and Det. Balmer told him yes. John Doe "AHCEL" who was also in the apartment asked Det. Balmer to let him see the license and Det. Balmer complied.
- 4. GONZALEZ asked Det. Balmer how much money did he have to "cop" (purchase) with and Bet. Halmer told GONZALEZ that he had \$4500.60. GONZALEZ told Det. Balmer that the two bunces would cost him \$2000.00 a piece. Det. Balmer told GONZALEZ that he was \$100.60 short. John Doe "A WIL" told Det. Balmer that he could beep the \$100.00 if Det. Balber got him a drivers license, CONMALEZ agreed with what Joan Doe "A:Crl" implied. Det. balmer agreed with the proposition.

Detective Horace D. Balmer

S/A John B. Pope, Group Supervisor

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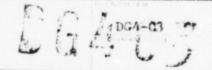
REPORT OF INVESTIGATION

(Continuation

March 10, 1975

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GONZALEZ, Jose et al



CT-75-0004

- 5. GONZALEZ told John Doe "ANGEL" to get the stuff (heroin) and John Doe "ANGEL" left the room. Noments later John Doe "ANGEL" returned to the bedroom and at approximately 2:00PM gave Det. Balmer Exhibit #3. Det. Balmer placed Exhibit #3 into his socks and as he was about to pay "ANGEL" the \$4500.00, GONZALEZ put his hand out for Det. Balmer to give him the OAF. John Doe "ANGEL" told Det. Balmer to wait a minute so he could write down what he wanted on the license and Det. Balmer complied. As soon as "ANGEL" gave Det. Balmer a piece of paper with instructions for his drivers license Det. Balmer started for the door.
- 6. While in route to the door GONZALEZ told Det. Balmer if he wanted some real weight to give him a day to get it together and Det. Balmer agreed. At approximately 2:05PM, Det. Balmer re-entered his OGV where S/A Carwell remained. Det. Balmer met up with surveillance officers and told them what had transacted between himself and GONZALEZ et al. Det. Balmer and S/A Carwell then returned to the NYDETF Office.

DESCRIPTION AND CUSTOMY OF EVIDENCE:

Exhibit #3, 77.86 grams (gross weight) of brown heroin contained in two small plastic baggies, secured at the top with red wire twist. Exhibit #3 was purchased by Det. Horace D. Balmer from GONZALEZ on March 5, 1975 at 2:00PM in apartment E3, 725 4th Avenue, Brooklyn, New York. Exhibit #3 was weighed, sealed and initialed by Det. Balmer and P.O. LeMoine and placed into the NYDETF vault for safekeeping. On March 6, 1975, P.O. LeMoine removed Exhibit #3 from the vault and hand delivered it to the chemist located at 90 Church Street, New York City for analysis and safekeeping.

PHYSICAL DESCRIPTION:

Jose CONZALEZ - See DEA-6 prepared by Det. Balmer dated January 17, 1975. On March 5, 1975 he was wearing multi-colored T-shirt and dangarees.

John Doe "ANGEL" - See DZA-6 prepared by Det. Balmer dated January 17, 1975. On March 5, 1975 he was wearing white T-shirt and light brown slacks.

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COPY 2

CONZALEZ, Jose et al CT-75-0004 CT-75-0004	REPORT OF INVESTIGATION	PAGE 1 OF 3
CONZALEZ, Jose et al CT-75-0904 CT-75-0904 CT-75-0904 CT-75-0904 CT-75-0904 CT-75-0904 Police officer George LeMoine Police officer James France CT-75-0904 Police officer George LeMoine New York, New York Officer Cane, CT-75-0904 Reference in made to all Reports of Investigation relative to NYDETF Came, CT-75-0904 Reference in made to all Reports of Investigation relative to NYDETF Came, CT-75-0904 As about 6:20 PV on 'eril 29, 1975, the above officers located defendant Jone 0000ZALEZ seated in a marked 1968 Chevrolet suburban truck bearing New York License 163 YPT, enginered to Arthur VALDEZ of 725 4th Avenue, Brooklyn, New York Anne seated in the vehicle were Angel ROSARIO of 365 53rd Street, Prooklyn, New York Anne seated in the vehicle were Angel ROSARIO of 365 53rd Street, Prooklyn, New York ancisco COTTO of 330 52nd Street, Prooklyn, New York and Margatet Louder of 44 4th Street, Brooklyn, New York Angel Avenue, Brooklyn, New York, where Police Officer LeToine identified Margatet Louder of 44 4th Street, Brooklyn, New York Angel Avenue, Brooklyn, New York, where Police Officer LeToine identified Margatet Louder of 10000 Angel Police Officer Angel Toine	N	
Police Officer George LeMoine Police Officer George LeMoine New York, New York New York, New York PRIME: Of 1968 Chewrolet, ID fGS15GP120576 1. Reference is made to all Reports of Investigation relative to NYDETF Case, CT-75-0004. 2. At about 6:20 PM on Foril 29, 1975, the above officers located defendant Jone GOMMALIN scated in a parked 1968 Chewrolet suburban truck bearing New York License 163 YPF, enfarered to Arthur VALDEN OF 725 Ath Avenue, Brocklyn, New York. Also meated in the webicle were Annel ROSARIO of 365 53rd Street, Proce 1978, New York ancisco COTTO of 330 52nd Street, Brooklyn, New York and Margaret LOOKE of 347 46th Street, Brooklyn, New York. 3. At about 6 30 PM defendant GOMMALEZ drove the above vehicle to 53rd Street and 3rd Avenue, Brocklyn, New York, where Police Officer LeMoine identified himself to GOMMALEZ and placed his under arrest. ROSARIO was also arrested when eix timfoil packets containing white powder alleged to be cocaine were found in his jacket pocket. Both defendants were advised of their counstitutional rights as per BEA-13 A by Police Officer George LeMoine. 4. Subsequent to this, the above vehicle and the four occupants were taken to the 65th Pet. New York City Police Department, for processing. After obtaining complete identification of MORE and 20770, they were released. 5. At converted was 030 3-10 to Amril 29, 1975 defendants O'ZALEZ and ROSARIO When the More of the Street, New York City for debricing and arrest processing. 1. At converted was 030 3-10 to the say York Drop Police on Tank Porce Offices, 21 Variet Street, New York City for debricing and arrest processing. 1. At converted was 030 3-10 to the say York Drop Police on Tank Porce Offices, 21 Variet Street, New York City for debricing and arrest processing. 1. Police Officer George LeGoine 1. Police		All de Faran
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A 157 May 7, 1975 GOV'T'S EX. 5

Group 14

REPORT OF INVESTIGATION

(Continuation)

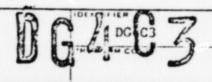
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CT-75-0004

THE HILL

CONZALEZ, Jose et al



6. On April 30, 1975, GONZALEZ and ROSARIO were removed from the Federal House of Detention by Police Officer LeMoine and Police Officer Fraser and transported to the Eastern District of New York Federal Court where they were arraigned before Magistrate Shiffman. GONZALEZ was held in \$50,000 cash bail and ROSARIO was released in \$5,000 personal recognizance bond. A date for a preliminary hearing was not set.

FIYSICAL DESCRIPTION:

Jose CONZALEZ is a white male, hispanic, 29 years of age, DOB: 7/19/46, 5'6" tall, 156 lbs. On April 29, 1975 CONZALEZ was wearing a grey sweatshirt, blue trouser and brown shoes. GONZALEZ has NYSIS #359368K and Social Security #584-74-7204. GONZALEZ resides at 725 4th Avenue, Apartment E3, Brooklyn, Mew York.

Angel ROSARIO is a white male, 32 years of age, DOB: 4/9/43, 5'7" tall, 155 lbs. On April 29, 1975, he was wearing a blue cotton shirt, blue dungaree jacket, blue trousers and black shoes. ROSARIO lives at 365 53rd Street, Brooklyn, Licy York.

Francisco COTTO is a negro male, hispanic, 27 years of age, DOB: 1/21/48, 5'11" tall, 165 lbs. On April 29, 1975 he was wearing a brown shirt, brown jacket, brown trousers and dark shoes. COTTO has Social Security \$060-44-8758 and resides at 330 52nd Street, Brooklyn, New York.

Margaret MOORE is a white female, 23 years of age, DOB: 7/24/51, 5'5" tall, 135 lbs. On April 29, 1975she was wearing a light green jacket, flowered blouse, blue dungarees and black shoes. MOORE has Social Security \$106-44-4135 and resides at 347 46th Street, Brooklyn, New York. HOORE is the girl friend of Jose GONZALEZ.

SCRIPTION & CUSTODY OF EVIDENCE:

Exhibit #4 - approximately 26.82 grams (gross) of alleged cocaine contained in eix small pieces of tin foil, further wrapped in a single piece of tin foil hearing no marks or labels. The evidence was weighed and scaled by PO LeMoine withoused by PO Fraser on April 29, 1975 and placed in the New York Drug inforcement Task Force Vault for safekeeping. On May 7, 1975, the evidence was removed from the vault by PO LeMoine and delivered to the DEA Chemist, West 57th Street, MYC for safekeeping and analysis.

A 158

May 7, 1975

GOV'T'S EX. 5

Group 14

REPORT OF INVESTIGATION

(Continuation)

TILL TITLE

CONZALEZ, Jose et al

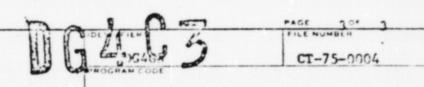


Exhibit #D - one New York State Driver's License in the name of Andrea GONZALEZ ID #G1554408934234793-46 was seized from defendant Jose GONZALEZ at the time of his arrest. Exhibit #D had originally been given to defendant GONZALEZ by Det. Balmer on March 5, 1975, in lieu of U.S. Currency as partial payment for Exhibit #3, approximately 77.86 grave (grose) of heroin.

AFFIDAVIT OF MAILING

STATE OF NEW YORK COUNTY OF KINGS EASTERN DISTRICT OF NEW YORK, ss:

LYDIA FERNANDEZ , being duly sworn, says that on the 18th
day of June, 1976 , I deposited in Mail Chute Drop for mailing in the
U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and
State of New York, % two copies of Government's Appendix
of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper
directed to the person hereinafter named, at the place and address state i below:
Richard Rosenkranz, Esq.
66 Court Street
Brooklyn N V 11201

Sworn to before me this 18th day of June, 1976

Sylvia & morrie

LYDIA FERNANDEZ